SOCIAL SECURITY DISABILITY INSURANCE

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

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SOCIAL SECURITY DISABILITY INSURANCE

THURSDAY, JUNE 30, 1983

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, D.C.

The subcommittee met at 9 a.m., pursuant to notice, in room B–318, Rayburn House Office Building, Hon. J. J. Pickle (chairman of the subcommittee) presiding.

[Additional material submitted for the record follows:]

STATEMENT OF THE AMERICAN ASSOCIATION OF RETIRED PERSONS

The American Association of Retired Persons, representing over thirteen million older Americans, appreciates the opportunity to comment on the administration of the Social Security Disability Insurance Program. AARP is greatly concerned about the adverse effect current procedures and standards have on thousands of disability recipients and beneficiaries—many of whom are older Americans. The disabled elderly rely most heavily on the social security disability insurance program and have a great deal at stake with the current review procedures and future changes in the program. Disability insurance is important to them, because for the older worker who becomes disabled, recovery is less likely than for a younger worker. But even if recovery does occur, the older workers tends to be less able to find employment. Moreover, the elderly are often the victims of multiple impairments and their ailments tend to be compounded by the factor of age.

P.L. 97–455, passed during the 97th Congress lame duck session, contained laudable provisions that temporarily corrected some of the inequitable procedures in the program. Comprehensive reform of a permanent nature must be enacted now, however, in order to insure that the review process will be humane and fair and will accurately assess the impairments of disability claimants.

ADMINISTRATION'S PROPOSAL

Secretary Heckler recently announced a package of major reforms, including revisions in the process of reviewing the eligibility of disabled beneficiaries. Although we commend the Administration for initiating program reform, AARP views their proposals as insufficient because they only affect a small portion of harmed disability recipients.

For example, an exemption of 135,000 mental impairment cases from the continuing disability investigations (CDIs) pending policy review would only affect a small portion of the mentally disabled—only those suffering from psychotic disorders. Individuals with non-psychotic disabilities will continue to be reviewed under unfair and inadequate standards. The inclusion of several additional impairments into the "permanently disabled" classification will exempt an additional 200,000 individuals from CDIs. AARP supports action to protect from the current CDI process individuals who are permanently disabled. In addition, we are also concerned about those who have been terminated from the rolls with impairments that are *now* considered "permanent" but were not prior to the Administration's action.

Another proposal would allow the payment of benefits during appeal but only through the reconsideration level where the individual will have a face-to-face hearing commencing in January 1984. The reconsideration determination occurs shortly after the initial decision but a much longer period passes between the

reconsideration level and the Administrative Law Judge (ALJ) hearing. Beneficiaries, many of whom are inappropriately terminated, lose their benefits and suffer irreparable financial injury while waiting for the appeal decision. AARP, therefore, favors extending interim legislation (P.L. 97–455) which provides benefits through the ALJ level, a most crucial period.

Federal legislation is needed in order to broaden the class of truly disabled individuals who have an interest that must be protected and who would benefit from comprehensive program reform.

H.R. 2987

AARP supports H.R. 2987, introduced by Representative James Shannon, because we believe it adequately addresses the concerns of disabled individuals and organizations representing the disabled and elderly. This bill will greatly improve the disability review process, restoring confidence in and equity to its administrative and substantive procedures. We would like to comment on a few of the provisions that will help achieve this goal.

Standards of Disability

Section 101 of H.R. 2987 provides that an individual's benefits may be terminated only if ineligibility is evidenced by significant medical improvement, except when conditions indicate an ability to engage in substantial gainful activity or the prior determiation of entitlement was clearly erroneous.

AARP is greatly concerned about individuals who are terminated from the rolls without substantial evidence of medical improvement. Many individuals who have been on the rolls for several years were awarded benefits after a proper determination of disability at that time. In many cases, there has been no medical improvement, and often, a deterioration since the original determination of disability. Yet, the Social Security Administration (SSA) has taken the position that disabled beneficiaries must meet current disability standards in order to remain on the rolls. As a result, benefits have been terminated with no weight given to the original determination.

Many courts have ruled that SSA cannot terminate benefits unless there has been medical improvement while other courts have held that the burden of proof is on SSA to prove that an individual is no longer disabled. Despite these rulings, SSA has refused to acquiesce and continues to deny benefits.

Section 101 will legislatively mandate that SSA meet a higher burden of proof by clear and convincing evidence. This provision will help insure that individuals who originally have been properly determined as disabled will be reassessed under more appropriate standards. This section will also guarantee that improperly awarded benefits will no longer continue and it acknowledges improvements in medical technology that may affect an individual's ability to engage in substantial gainful activity.

Multiple Impairments

As previously stated, the elderly are often the victims of multiple impairments. SSA will only consider the combined effect of impairments if at least one of the impairments, considered separately from the others, is found to be severe. Many elderly are not able to meet this standard and are denied benefits.

Section 102 of H.R. 2987 requires that the Secretary consider the combined effect of all of the individual's impairments in determining whether the person is unable to engage in substantial gainful activity. This provision will eliminate the inequities against individuals suffering from multiple impairments and assure that all impairments, individually and jointly, are fully considered in determining whether an individual meets the definition of disability.

Evaluation of Pain

Under current law, while pain alone can be disabling, subjective evidence of pain must be corroborated by medically acceptable clinical and diagnostic techniques. Unfortunately, medical technology is unable to offer an explanation and trace the cause in many cases of severe and persistent pain. Section 103 of H.R. 2987 would require that subjective evidence of pain be considered in determining whether a person is under a disability even if it cannot be corroborated by medical findings established by clinical or laboratory diagnostic techniques. As a result, subjective evidence of disabling pain and other similar symptoms will be sufficient to support a finding of disability.

Evaluation of Ability to Work

Section 104 of H.R. 2987 requires the documentation of a realistic evaluation of the individual's remaining capacity to meet the demands of competitive work on a sustained basis in determining whether an individual is able to engage in substantial gainful activity. In the past, SSA has often failed to adequately evaluate an individual's ability to work, relying on inappropriate medical criteria, which was neither comprehensive nor did it utilize a licensed occupational therapist under the direction of a physician. Since this provision will require SSA to obtain relevant medical and vocational information, many older Americans and mentally impaired individuals with limited work experience and functional limitations will benefit from the development of a more complete record that accurately assesses their capabilities.

Moratorium on Mental Impairment Reviews

In our comments on the Administration's proposals, we mentioned the "pause" in the CDIs for 135,000 people who suffer from "functional psychotic disorders" pending policy review. AARP supports the intent of this proposal but it does not go far enough. Section 201 of H.R. 2987 imposes a moratorium on all CDIs of the mentally impaired until SSA completes revisions in the Listings of Mental Disorders and procedures for evaluating residual functional capacity of mentally impaired individuals. Revisions are needed because the current Listings and procedures do not adequately assess the ability to work. Scientific research and clinical data in the fields of psychiatry and rehabilitation psychology support this conclusion. We can no longer permit the use of inadequate standards that result in the termination of benefits for many mentally impaired disability beneficiaries who are unable to (re)enter into the labor force. A moratorium is needed until comprehensive standards that accurately assess work ability are developed—standards that are consistent with medical and scientific knowledge in the disability field.

The provision for redetermination of eligibility, once appropriate standards are developed for those who were denied initial benefits or dropped from the rolls through the application of improper criteria, will insure that they will not continue to suffer the effects of arbitrary and unjustified denial of benefits.

Continuation of Benefits During Appeals

Section 202 of H.R. 2987 would make permanent the continuation of benefits through the appeals process. As stated earlier, AARP supports the payment of benefits through the ALJ level. By October 1, 1983, the expiration date for the continuation of benefits provision of PL 97–455, all of the problems resulting from the review process will not be resolved. There will still be many individuals who have had their benefits improperly terminated and are eligible to appeal. Making permanent this provision will insure that these individuals will not experience the financial and emotional hardships suffered by many prior to PL 97–455.

Disability Determination Review Procedure

Section 203 of H.R. 2987 requires that the state disability determination section notify an individual about an unfavorable disability determination. The notice must sufficiently explain the rationale for the decision, evidence relied upon, and inform the individual of the right to submit additional evidence at a personal interview if requested within 30 days. After the interview, the state agency will affirm, modify, or reverse the preliminary notice. An unfavorable decision may be appealed to an ALJ.

PL 97–455 mandates that a face-to-face interview occur at the reconsideration level. Section 203 eliminates the reconsideration level and moves the personal contact with the decisionmaker up to the initial level. This would allow the decisionmaker to see the individual during the initial stages of the process. It would allow the state disability adjudicator to make a personal assessment of the individual's capabilities and provide the disabled person with the opportunity to rebut the initial denial determination with additional evidence. This early personal contact with the individual will result in a more complete assessment that should lead to fewer appeals.

Case Development and Medical Evidence

In determining continuing disability, SSA does not adequately consider the complete record of the disabled beneficiary. Medical and vocational evidence collected and relied upon by SSA is usually more recent information which

neglects to consider the history and course of the impairment(s), often excluding evaluations which occured prior to the preceding twelve months. This procedure has a detrimental impact on individuals with long-term, chronic illnesses which often follow an erratic course. SSA has and can mistakenly consider temporary improvement as a cessation of disability and terminate the individual from the disability insurance rolls.

Section 204 of H.R. 2987 requires SSA to review the complete medical and vocational history of an individual including evidence from prior evaluations. This provision also provides that SSA obtain evidence from a treating physician who is familiar with the beneficiary's medical condition and history. These changes help insure that continuing eligibility assessments will be based on a complete and accurate examination of the beneficiary's record.

Assistance with Reviews of Continuing Eligibility

Many disabled beneficiaries are elderly and have physical or mental impairments which prevent them from comprehending notices from SSA. SSA should recognize that many individuals are on the rolls partially because their impairments keep them from understanding basic concepts and may have difficulty complying with agency notices.

Section 205 of H.R. 2987 requires that SSA contact individuals who will be subject to CDIs and determine whether they need assistance in complying with agency requests. This provision will help prevent the improper termination of individuals who do not obey agency instructions because of lack of comprehension.

Uniform Standards

In adjudicating disability claims, state agencies, ALJ's and the Appeals Council are governed by the Social Security Act, the Code of Federal Regulations, the Social Security Rulings, and Supreme Court decisions. The Rulings amplify SSA policy and provide interpretations of the Act and Regulations. In order to clarify all of these for state disability adjudicators, SSA issues to them a detailed set of administrative instructions known as the Program Operating Manual System (POMS). They set forth the objectives of the disability program and standards with which the state agencies must comply in reaching a disability decision. Although the POMS contain the guidelines to be used in determining disability, it does not have the force or effect of the law and, therefore, is not binding on ALJ's or the Appeals Council. The POMS are neither published nor subject to rulemaking procedures under the Administrative Procedure Act (APA), and are often at variance with the standards set forth in the Social Security Act, Regulations and Rulings.

Section 202 of H.R. 2987 makes the APA requirements of public notice and comment prior to publication of a final rule binding on all disability determinations. In addition, only published rules promulgated pursuant to the APA, rather than informal policies, will be binding uniformly at all levels of decisionmaking. As a result, a single, uniform set of standards will be applied at all levels of the disability determination process.

AARP feels that all adjudicative standards that affect substantive rights should be promulgated through notice and comment rulemaking as required under the APA. The purpose of the rulemaking process is to assure fairness and mature consideration of rules of general application by giving affected members of the public a voice in major policy decisions. The procedures do not merely provide a means to inform interested parties about official actions which may affect them. The main thrust is to permit those parties to be heard before any official action is taken. The process allows the agency to have before it important information and alternative proposals from many individuals and organizations with substantial expertise that can result in properly fashioned policy decisions.

This provision will also remedy the serious problems that have occurred through the application of conflicting standards at various levels of review within SSA.

Conclusion

In conclusion, AARP would like to thank the Committee for holding hearings on an issue of paramount concern to the Association. We urge you to act favorably on H.R. 2987 which will substantially reduce the number of people whose benefits are erroneously terminated.

If enacted, H.R. 2987 will strengthen the initial levels of determination, insure complete and accurate assessments of disability, and restore confidence in the public that the social security disability program will operate under humane and efficient standards.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., July 7, 1983.

Hon. J. J. PICKLE,
Chairman, House Subcommittee on Social Security, Ways and Means Committee, Washington, D.C.

DEAR MR. CHAIRMAN: The AFL–CIO appreciates the opportunity to present our views to the Subcommittee on Social Security on the Social Security Administration's Continuing Disability Investigation (CDI) Program.

Without Congressional authorization, the Administration has restricted the standards by which disability is evaluated and has terminated the benefits of hundreds of thousands of severely disabled social security beneficiaries. Legislation passed in late 1982 helped relieve the situation somewhat but serious problems remain. Secretary Heckler's recent proposals neither resolve or satisfactorily respond to the problems faced by most disabled beneficiaries. Legislation to ensure fair, accurate and humane reviews for all disability beneficiaries is imperative.

The AFL-CIO recommends a number of changes in the disability determination process which should be included in any legislation designed to deal with the problems and injustices which have developed under the CDI program. First, the Social Security Administration (SSA) should be required to adhere to the following standards in evaluating disability:

1. No individual should be terminated unless his or her medical condition has improved except in cases where the original decision was fraudulent or clearly erroneous.
2. The evaluation should include the combined effects of an individual's impairments even if none of the conditions considered separately would constitute an eligible disability. It should also include consideration of vocational factors based on a realistic evaluation of a beneficiary's ability to function in a competitive work environment on a sustained basis.
3. All evidence as to intensity and persistence of pain should be included in the evaluation.

SSA procedures must also be revised in a number of areas to ensure that cases are handled fairly and promptly. To achieve this objective, SSA should be required to change procedures in the following ways:

1. Place a moratorium on continuing disability investigations for mentally disabled beneficiaries until SSA demonstrates to Congress that appropriate and fair procedures for assessing such individuals are in place.
2. Make permanent the provisions of P.L. 97–455 (scheduled to expire in October 1983) providing for the continuation of cash benefits and Medicare eligibility through completion of the appeals process but require a face-to-face interview at the initial level of review rather than at the reconsideration stage.
3. Allow appeals of an adverse decision to go directly to an Administrative Law Judge and eliminate the reconsideration level of review. The latter is unnecessary since invariably the only result is reaffirmation of the original decision and delay for the beneficiary.
4. Require that all hearings be held in locations and buildings reasonably accessible to handicapped persons. Similarly, require a determination whether mentally disabled persons require assistance in complying with SSA's instructions.
5. In making a determination of disability, consider all medical and vocational evidence including evidence used in the inital determnation and evidence used in all subsequent reviews.
6. Require that decisions on medical eligibility be made by appropriately qualified professionals and on the basis of standards established on the use of consultative examinations. These standards should include qualifications for those performing such examinations and SSA procedures for monitoring and evaluating results.
7. Require SSA to follow the public notice and comment requirements of the Administrative Procedures Act.

We believe that H.R. 2987, introduced by Representatives Shannon and Stark, is a good bill and should serve as the basis for these reforms. It is a well-designed piece of legislation that pinpoints many flaws in the present Continuing Disability Investigation (CDI) Program and would effectively correct them.

Many recipients had their benefits terminated and failed to appeal because they considered the situation hopeless or did not fully understand their rights. In the event Congress enacts remedial legislation, these individuals should have an opportunity to reopen their cases and have them evaluated under the standards and procedures of the new law.

With the exception of the medical improvement issue and the payment of benefits pending appeal, the problems of new applicants are identical to those faced by recipients undergoing CDI investigations. In its understandable concern about the unfair administration of the CDI program, Congress should not overlook the possibility that similar injustices could be inflicted on those undergoing initial disability determinations and should act to prevent this by applying appropriate provisions of any remedial legislation to new applicants.

The AFL–CIO recommendations are intended to resolve the major defects that have become apparent through GAO investigations and the experience of tens of thousands of terminated disability beneficiaries. The AFL–CIO accepts the premise that periodic reviews of disability cases are appropriate to determine that recipients remain unable to work. But the abuses inflicted on recipients by the CDI review program must be ended. This can only be accomplished by legislation along the lines we have recommended which Congress should enact as soon as possible.

Sincerely yours,

RAY DENISON,
Director, Department of Legislation.

STATEMENT ON BEHALF OF THE AMERICAN PSYCHOLOGICAL ASSOCIATION AND THE ASSOCIATION FOR THE ADVANCEMENT OF PSYCHOLOGY

Thank you for allowing us to present this statement about the Social Security Disability Insurance Program on behalf of the 72,000 members of the American Psychological Association and the Association for the Advancement of Psychology. We are committed to serving the needs of the chronically mentally disabled, many of whom have been severely hurt by the Administration's actions on SSDI.

Amendments to the Social Security Act in 1980 included a provision requiring review of all cases of beneficiaries whose disabilities have not been determined to be permanent. These reviews, known as Continuing Disability Investigations (CDI) were begun by the Social Security Administration in March of 1981. Although the CDI process has adversely affected disabled individuals in all categories of disability, the chronically mentally ill have been disproportionately affected. Durng the first year of the CDI process, 28.6% of the initial cessations were mentally impaired beneficiaries despite the fact that only 11% of the total disability insurance rolls is made up of chronically mentally disabled individuals.

An explanation for this disproportionate impact on the mentally impaired can be found if one looks at the nature and treatment of mental illness. The overt symptomatology of chronically mentally impaired individuals is often reduced by the administration of psychotropic medication. When medication is combined with provision of an adequate social support system over an extended period of time, overt symptomatology often declines to the point where the individual is able to live independently or in a semi-sheltered environment in the community. This ability to live somewhat independently does not necessarily mean, however, that the individual is capable of engaging in competitive employment.

Unfortunately, the Social Security Administration (SSA), in its zeal to carry out the Administration's policy on reducing federal expenditures in the health area, implemented a policy which caused many chronically mentally ill recipients to lose their benefits. SSA determined that if a recipient failed to meet the criteria of the Medical Listings, which address the question of overt psychiatric symptomatology, the beneficiary was no longer disabled and was in fact capable of engaging in work activity. This policy was mandated by the Social Security Administration even though federal regulations required that SSA assess capacity to perform work activity as a separate step from assessing the medical functioning of the individual (20 C.F.R. 404.1545(c) and 20 C.F.R. 416.945(c)).

SSA has maintained that if an individual exhibits overt symptomatology of such proportions that he or she meets the Medical Listing criteria, then the individual is not capable of work activity. Conversely, SSA assumed that an individual

can work who does not meet the Medical Listing criteria, i.e., does not exhibit overt symptomatology. SSA also contends that an individual who retains some measure of residual functioning which enables him or her to live independently in the community is able to work. Finally, SSA assumes a direct correlation between overt psychological symptomatology and functional behavior. All of these assumptions have a direct impact on the rehabilitation of the mentally disabled because of the chronic nature of their illness and the length of time required to achieve the desired rehabilitation outcome, i.e., employment.

In response to this continuing adverse impact on the chronically mentally ill by the Social Security Administration's CDI process, the American Psychological Association has actively participated in efforts to revise SSA policies related both to the determination of disability utilizing the Medical Listings criteria, and to determination of an individual's capacity to engage in substantial gainful activity. As a result of meetings between SSA officials and advocacy and professional organizations including the American Psychological Association, several work groups were formed to explicitly address identified problems in the disability determination and redetermination process. Although we were represented on two of these work groups, the Medical Listings work group and the Work Evaluation work group, the future meetings of the work groups have been cancelled by the associations because of the Administration's stand on proposed Senate legislation to reform SSDI treatment of the mentally disabled.

We have supported this bill by Senator Heinz (S. 1144) ; a bill that would make significant revisions to the Social Security legislation and establish a moratorium on continuing disability investigations until these legislatively-mandated reforms are implemented by SSA. As you know, the Administration's response was to oppose the bill. Justification for this opposition was based on Secretary Heckler's assertion that "We do not anticipate that revisions will involve such radical changes in the standards to justify a moratorium." Further, Secretary Heckler's response opposed a provision in the Heinz bill which would have created a panel of outside experts to make recommendations to the Social Security Administration. This opposition was based on Secretary Heckler's assertion that such a panel would "create great pressure to make substantial liberalizations in our standards."

The Administration's opposition to the Heinz bill makes clear that changes to the Social Security Administration's policies and procedures related to determination and redetermination of disability claims will only be made via Congressional mandate.

We actively support the package of reforms introduced by Representative Shannon related to SSDI/SSI legislation (H.R. 2987). Our reasons for supporting this important set of reforms are outlined below. While we support the entire package of reforms introduced by Congressman Shannon, our expertise related to particular portions of the proposed reforms may be of special assistance to you. For this reason we will address specific sections of the proposed reforms as they relate to current sections of the SSDI and SSI legislation.

Title 1—Standards of Disability—Section 101—Standard of Review

It has been recommended that ". . . before an individual's benefits can be terminated, the finding of cessation must be supported by clear and convincing evidence indicated any one of the following: . . . the individual now demonstrates a capacity to perform substantial gainful activity or . . . he or she is none the less a beneficiary of advances in medical or vocational therapy or technology which result in a demonstrated capacity to perform substantial gainful activity . . .".

We strongly support inclusion of this requirement that capacity to perform substantial gainful activity be demonstrated. Several years of psychological research provide significant evidence that psychiatric symptomatology is a poor predictor of future work performance. There appear to be no symptoms or symptom patterns which are routinely related to individual work performance. Further, diagnostic category has been found to be a poor predictor of work performance. Based on this research it is clear that assumptions about ability to engage in work activity must be made neither on the basis of diagnostic category nor on the presence or absence of psychiatric symptomatology. Rather, determination of an individual's ability to engage in substantial gainful activity must be made only on the finding of directly applicable evidence.

Section 104—Evaluation of Ability to Work

The proposed legislation recommends that "for individuals suffering from a severe mental impairment . . . a determination that they are not disabled may not be made without referral to an appropriate source for a work evaluation."

We strongly support adoption of this recommendation. In every study in which work adjustment skills were assessed, these skills were found to be significantly related to future work performance. It has been determined that the best clinical predictor of future work performance is a rating of a person's work adjustment skills made in a workshop setting or sheltered job site. Research evidence indicates that this test is the only valid work assessment procedure currently available. In every instance in which an overall measure of work adjustment skills was calculated, the score on the overall measure was predictive of future vocational performance.

Extensive of psychological research has also demonstrated that there is little or no correlation between a person's ability to function in one particular environment (e.g., an independent living setting or community setting) and that same person's ability to function in a different type of environmet (e.g., a work setting). Further, large scale research results have demonstrated that there is little correlation between ability to work, social activity and basic living skills. It has been concluded that community adjustment involves relatively distinct yet independent dimensions. A review of these data indicates clearly that determination of an individual's capacity to engage in substantial gainful employment can be made legitimately only in a structured work evaluation site.

Section 105—Consideration Given Non-competitive Work

The recommendation that "no individual who is working in a sheltered work setting or other non-competitive work environment shall be regarded, solely by virtue of that work, as having demonstrated an ability to perform substantial gainful activity," must be supported in light of the above discussion.

TITLE II—DISABILITY DETERMINATION PROCESS

Section 204—Case Development and Medical Evidence

It has been recommended that "in making such final determination the Secretary shall consider all medical and vocational evidence relating to such impairment or impairments, including medical and vocational evidence used in making the initial determination that the individual was under a disability and medical evidence used in subsequent review, determination, or judicial review relating to such impairment or impairments."

As noted earler in this statement, the Social Security Administration is already mandated by the Code of Federal Regulations to assess capacity to work. It is because of the erroneous assumptions that SSA has made regarding capacity to work, psychiatric symptomatology, and an individual's performance in non-work related activities, that these regulations have not been followed. As a result, the Social Security Administration has not been considering vocational as well as medical evidence in making its continuing disability decisions. Clearly this information must be obtained and must be utilized.

Section 207—Qualifications of DDS Medical Professionals

It is recommended that the "decision on an individual's eligibility . . . be made only after a qualified psychiatrist or psychologist in the State Agency has completed the medical portion of the sequential evaluation and RFC assessment."

We strongly support this recommendation. According to 1982 figures compiled by relevant divisions of the American Psychological Association, there are approximately 12,600 psychologists nationwide who are appropriately trained and have the clinical expertise necessary to provide these evaluations. SSA has stated that there are not adequate numbers of qualified mental health professionals to perform the evaluations. This claim is erroneous, especially in light of the above figures.

TITLE III—MISCELLANEOUS AMENDMENTS

Section 303—Continued Benefits for Persons in Vocational Rehabilitation Programs

It is recommended that beneficiaries continue receiving benefits ". . . as long as such individual is participating in an approved vocational rehabilitation program under a State plan approved under Title I of the Rehabilitation Act of 1973."

Psychological research also indicates that there is a significant positive association between previous employment history and future vocational performance. What these data suggest is that in order for severely psychiatrically disabled persons to become successfully rehabilitated, they need time to develop a work history. This work history might be gained in sheltered or transitional employment settings. However, the transition from long-term unemployment to competitive employment is simply too large a step for most mentally disabled persons. Without intermediate vocational experiences, it is unlikely that most mentally disabled persons will develop the capacity for stable, competitive work. We strongly support the recommendation that individuals who are participating in a vocational rehabilitation program continue to receive disability benefits.

Section 306—Advisory Council on Medical Aspects of Disability

It is recommended that an Advisory Council on the Medical Aspects of Disability be created. The function of the Council would be to assist in the development and evaluation of the process of disability determinations and to provide the Secretary with advice and recommendations on matters of general policy with respect to disability. It is recommended that the Council consist of twenty members including designees of relevant professional associations, state agencies, and experts in the field.

We wholeheartedly support appointment of a Council of outside experts. Through this vehicle, the Council could provide the professional expertise and guidance which has been needed in the Social Security Administration's attempts to refine its policies. Because this formal mechanism has not been present, representatives of the various professional and advocacy organizations have met with the Social Security Administration on an informal (not Congressionally mandated) basis. Although these meetings have appeared fruitful, relatively little concrete change has been forthcoming—as evidenced in the Administration's opposition to the Heinz bill.

We re-state our strong and continued support of the reform measures which have been introduced by Representative Shannon and Senator Heinz. The American Psychological Association will once again participate in meetings with the Social Security Administration if it appears that these meetings will be held in good faith and will be productive. We are most anxious to halt the unfair terminations of disability benefits to the chronically mentally ill.

Thank you for this opportunity to give our views.

BROWNING, MOREFIELD, SCHELIN, & ABRINGTON, P.C.,
Lebanon, Va., July 8, 1983.

Re: Termination of Social Security Disability Benefits.

JOHN SALMON,
Chief Counsel, Committee on Ways and Means,
Washington, D.C.

GENTLEMEN: This firm represents many claimants concerning Social Security Disability benefits. In the last two years we have seen huge numbers of termination cases. We have seen people denied continuation of benefits on medical reports which actually support disability. We have also noticed that the Social Security Administration pays very little attention to their own regulations in reviewing these cessation claims. For example, a claimant who is over the age of 55 is considered to be of advanced age. But, for some reason, there appears to be a total lack of consideration for the claimants' age, education, and work background in deciding if the claimant is able to work. There also appears to be a total failure on the initial and reconsideration levels to consider the claimant's problems in combination. Many of these claimants suffer from a combination of impairments and when these impairments are considered together, the claimant is obviously unable to perform any type of gainful employment.

What we have also seen is a deliberate use of medical providers who, in our opinion, do not have the proper qualifications. In this area, the medical firm of Johnson/Byers has been used extensively by the Disability Determination Services from Roanoke. These doctors are not engaged in private practice but are used repeatedly out of state and examine the claimants on a very rushed basis. Their reports are a matter of humor to attorneys who practice before the Social Security Administration. The agency will give utmost consideration to these form reports and no consideration to the reports of qualified attending physicians.

The current administration proposes a face to face meeting at the reconsideration level. As an attorney who has handled many cases before the agency, I receive this proposal as an absolute insult. Face to face meetings with any person of the agency is of absolutely no use unless that person has the proper authority and training. When the meetings are conducted by the same people from the same office who denied the man on initial level, then there is little hope that these people will change their minds. All this proposal will mean is that the claimants will have additional legal costs involved in these face to face meetings because they will still have a hearing before an administrative law judge. The agency itself could save a lot of money and reduce considerably costs by abolishing the reconsideration level in the first place.

The current administration would love nothing more than to reduce the administrative law judges to robots that they can control. There is, as the Committee well knows, pending litigation in the Federal Court in Washington concerning the quotas and attempts to reduce their pay and status level. The Committee Hearing could be of great benefit to the claimants if the Committee could bring out the need for independent administrative law judges who are free from political pressures imposed by the current administration.

The current administration has avoided congressional review of many of its regulations by imposing their operational manual, commonly referred to as the POMS, which is binding on the administrative law judges. Due to the recent Supreme Court ruling regarding legislative vetoes, this current procedure is a real insult to Congress as well as to the claimants. Judges should not be bound by the POMS which is basically an operational manual for clerks to use. Judges should be free to look at cases on an individual basis. In reviewing the Act itself, the word individual is used several times. Congress should see fit to enforce the Act and not allow the current administration to defeat the evry purpose of the Act. There is simple no reason why the Social Security Administration cannot review claims on an individual basis rather than to have everyone put into a position which a moran could handle.

The Appeals Council is the appellate level over the administrative law judges. The Appeals Council is another tool of the agency. The Appeals Council is currently engaging in a practice unknown in legal circles. They are reversing the favorable decisions of the administrative law judges when the Appeals Council never sees the claimant. They are judging the claimant's creditability strictly on the basis of the tape made at the hearing and overruling the judges who see the claimants face to face at the hearing and are in a far better position to judge the creditability of the witnesses and the claimant. The Appeals Council, in their reversals, are not using any type of reasons other than making very brief comments that they do not feel the evidence supports the conclusions arrived at by the administrative law judges. Most of the Federal Courts are taking a dim view of this procedure. However, it is the claimant who must wait many months before his claim can be heard in Federal Court. Is it fair or practical to make the Federal Courts the guardian of the Social Security system to insure that hearings are conducted in a fair and proper manner?

In summary, we feel that the current administration's policy on terminations just reflects President Reagan's overall view toward Social Security and Disability benefits in general. We feel that trying to restrict these benefits with unusual delays, reduction in the force of personnel and imposing standards which Congress never intended nor approved. We sincerely hope that this House Sub-Committee hearing will take a strong stand against the arbitrary behavior of the administration.

I sincerely appreciate the opportunity to present my views.

Sincerely yours,

LARRY GRANT BROWNING.

STATEMENT OF HON. SILVIO O. CONTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

I want to congratulate and thank the Ways and Means Subcommittee on Social Security for promptly scheduling hearings on the important issue of Social Security Disability. In particular, I want to commend Chairman Pickle for his efforts and his evenhanded, judicious consideration of the serious, and in some cases life or death, problems we face. The development of a fair and comprehensive disability reform package represents one of the greatest challenges Congress must

meet this year. I feel confident that a concerned and concerted effort by the membership, combined with Chairman Pickle's able and willing leadership, will more than meet the challenge.

By now, we are all quite familiar with the "horror stories" that have, in one way or another, reached our offices—stories of clearly erroneous terminations, attempted and successful suicides, endless bureaucratic bungle, needless mental anguish, unjustified financial hardship, and the list goes on and on. Is it possible for a federal assistance program such as SSDI to be, at times, so insensitive, so miscalculating, so inhuman? The answer is obviously yes if one considers such candid and revealing letters as this one which I received from one of my constituents:

> "I really don't know what I expect to accomplish by writing to you, but I feel we are fighting a giant . . . If in the end we lose, we will not only owe money back to the Social Security Administration, but we will also owe our attorney a fortune. We will have to take out a second mortgage on our home. It just doesn't seem fair . . . The Social Security doctor's treatment of my husband was brutal. We were kept waiting for 1½ hours and my husband was in excruciating pain. Although my husband could not perform some of the tests because of the pain, the doctor stated, 'If you don't do it, I'll tell Social Security you're being uncooperative.' We felt as though we were in Gestapo headquarters. My husband's doctor is outraged and feels that my husband meets all the criteria to continue to receive benefits . . . but the Social Security doctor must disagree."

Equally well known to all of us are the reasons for these horror stories occurring. Prior to 1980, SSA was required to review only those disability cases in which medical improvement was expected. Because the number of beneficiaries increased by over 52% during the 1970s, however, Congress mandated periodic review of all disability recipients under the Social Security Disability Amendments of 1980 and the Bellmon Amendment. These amendments provided for own-motion review by the Secretary of Health and Human Services beginning in January of 1982. The review process was stepped-up ten months, however, as a result of a 1981 GAO report which indicated that nearly 20% of all disability beneficiaries were not disabled under the law.

The combination of increased reviews, a stepped-up timetable, inadequate administrative process, and insufficient review personnel resulted in an inexcusable number of faulty terminations. On the average, 67% of all disabled individuals terminated from the rolls were later reinstated upon appeal. In response to this inordinately high reversal rate, other Members of Congress and I were successful in gaining enactment of stopgap legislation during the 1982 lame duck session. The 1982 legislation temporarily eased the problem of erroneous disability terminations by:

1. slowing down the review process mandated by the 1980 Social Security Disability amendments in states with high backlogs of reviews;
2. establishing, for the first time, a face-to-face evidentiary hearing at the reconsideration level of appeals beginning no later than January 1, 1984; and
3. continuing benefit payments through the Administrative Law Judge level of appeal for those recipients terminated prior to October 1, 1983.

Since last year, further developments have taken place. The GAO recently conducted a thorough investigation of the Social Security Administration's decision-making process in reviewing the disability of persons with mental impairments. GAO released the findings of its investigation in April of this year and concluded that not only were many uninformed decisions regarding termination of the mentally impaired being made across the nation, but that 91% of said terminations have been overturned by administrative law judges. Such reversal rates are unreasonable and lend further evidence to the review system's inherent flaws.

Again, in response to what I believe is a problem requiring immediate action, I introduced legislation to impose a moratorium on reviews of the mentally disabled. That moratorium would be in effect until such time as the Social Security Administration revised the medical listings which determine psychiatric disability. Let me stress, however, that the measures taken last December as well as most of the legislation introduced thus far in the 98th Congress are only temporary in nature. They treat only several of the symptoms of a dangerous and frightening disease which afflicts the very core of the Social Security Disability Program. Our challenge now is to rout out that disease lest we, too, be accused of being insensitive, miscalculating, and inhuman. Today, we begin to tackle that challenge.

Some steps in the right direction have been taken. Legislation which attempts a more comprehensive solution has been introduced and the Secretary of Health and Human Services, Margaret Heckler, did announce a reform package on June 7th. While I am extremely pleased that certain Members of Congress and the Administration recognize the seriousness of the problem we face, I fear these reform measures do not address all of the issues at hand.

It is my feeling that any all-encompassing, reform legislation must address, among others, the following four concerns:

First, Standards of Review. Currently, benefits can be terminated even if there is no evidence of medical improvement and, in many cases, even if the person's condition has deteriorated since the original determination of disability. No use is made of medical or other documentation which is over one year old. Thus, an individual who has been on the rolls several years is treated the same as a new applicant. No weight is given to the original determination of disability even though it was valid at the time rendered. Any reform legislation should therefore provide that before a person's disability benefits can be terminated, it must be shown that either the prior decision was clearly fraudulent or the person is currently performing substantial, gainful activity. Failing these, benefits should be terminated only upon a finding, supported by clear and convincing evidence, that there has been significant medical improvement which enables the person to perform substantial, gainful activity; or new medical evidence and a new assessment of residual functional capacity must show that the person has benefited from advances in medical or vocational therapy or technology which has resulted in his ability to perform substantial, gainful activity.

Second, Continuation of Benefit Payments. Prior to the 1982 stopgap legislation, benefit payments were suspended one month following receipt of the termination notice. Currently, benefit payments are continued through the Administrative Law Judge level of review, but only for those recipients terminated before October 1, 1983. Until such time as the standards for review used by the state agencies and the administrative law judges are made consistent, benefit payments should continue to be made to disability recipients through the ALJ level. Once review standards have been made consistent, benefits should be continued through the first face-to-face appeals level. Beginning January 1, 1984, the first face-to-face meeting will take place at reconsideration.

Third, Mentally Impaired. Due to the unjustifiably high reversal rate (91%) among terminations of the mentally impaired, I feel it is incumbent upon Congress to place a moratorium on their review until the Social Security Administration completes revisions in the standards and procedures for evaluating mental impairments. A similar proposal was made part of the reform package announced recently by HHS and, as I stated earlier, I have introduced legislation to the same effect. The need for such action is obvious. Some internal, CDI reforms regarding the mentally impaired have been initiated by SSA, but again, these reforms do not adequately address the immediate problem. In his testimony before the House Select Committee on Aging recently, Paul B. Simmons, Deputy Commissioner of Social Security, clearly stated the difficulty:

"Cases involving mental impairments are among the most difficult to adjudicate because the medical signs of mental illness are often dependent on observations of behavior rather than on the more precise . . . findings available for physical impairments."

A moratorium is in order until the medical listings which determine psychiatric disability are revised. It would be far preferable to impose this moratorium as part of a comprehensive reform bill than it would be to enact one separately.

Fourth, Non-acquiescence in Decisions of Circuit Courts of Appeals. One of several reasons for the discrepancies between administrative law judges decisions and those of state disability determination units was mentioned above. Another reason for the discrepancies is the Social Security practice of "non-acquiescence," or refusal to apply the statutory interpretations of Appeals Courts within a given federal circuit to disability cases adjudicated within that jurisdiction. SSA simply ignores decisions wth which it disagrees and refuses to apply the decisions to anyone other than the plaintiffs in the litigation. I urge this committee to clarify the powers of SSA to interpret the law with a more appropriate recognition of proper judicial and administrative roles in this process.

The foregoing is far from a complete list of the issues which need to be addressed by the Committee with regard to comprehensive social security disability reform. I am hopeful that other testimony presented to the Committee today will address the remaining problems.

Again, I thank Chairman Pickle and the Members of the Committee for holding these hearings. I eagerly look forward to working with you in the coming months.

STATEMENT OF PETER LOEB, EXECUTIVE DIRECTOR, DISABILITY ADVOCATES

Mr. Chairman, members of the Social Security Subcommittee, members of the Ways and Means Committee and honored Members of the Congress: We are honored to be able to present to you our views on the resolution of one of the most cruel and tragic developments in recent years.

Disability advocates monitors legislation of prime concern to persons with disabilities throughout this Nation, throughout these years we have worked with members of this subcommittee on issues of mutual concern on a non-partisan basis. We are grateful for the support and assistance we have received from Members on both sides of the aisle.

My name is Peter Loeb and I am executive director of Disability Advocates.

In March of 1982 we testified before this committee as follows regarding the disability insurance program under the Social Security Act:

"We are now before a combination of circumstances which requires legislative remedy . . . We come before you at a time when our people are dying and suffering due to reviews carried out under the disability amendments of 1980. . . ."[1]

This organization submitted documented material into the record at that time and so did many others who presented testimony on the need for congressional reform of the disability determination process.

We are persuaded that this subcommittee, this full Committee of Ways and Means, this House of Representatives is now prepared to make the much needed legislative reforms. This task will not be an easy one.

We could provide this subcommittee with even more stories, more suicides, more devastation and we could do so with even more ease in 1983. During the ensuing years the situation has grown worse, not better. We have decided not to do that this year. With a subcommittee prepared to take action, we do not believe we will all move closer to the goal of legislative reform of the disability review process merely by parading before this panel a new set of "horror" stories. This committee, this Congress and our shared goals of reaching a formula which will reform the system would not be well-served by such testimony.

Let us assure each and every member that the crisis is no less lethal simply because we have chosen not to describe its blood and guts in these pages. More people are suffering, more are dying, more are deprived of due course in the appeals process.

Reform of the Disability Review Process

In the days which follow, this committee will draft and report a bill to reform the disability review process. We urge members not to settle for quick fixes and temporary stopgap measures. Failure to address the basic needs of reform which currently exist would simply postpone further action.

Legislative remedy should be broadbased and not piecemeal. The urge to solve a problem for one disability group alone will leave unresolved the grave problems of others. Indeed this panel would then be besieged by one group after another, each claiming that it had a report affirming that wrongs done to that group were the most horrendous. Legislation for all categories has become a tradition and it is one which we support. We oppose limited measures which exclude thousands of beneficiaries or claimants in robbing Peter to pay Paul.

Legislative remedy must alter the standards to be followed for termination. We urge this subcommittee and Congress to mandate that no individual be terminated unless his condition has improved, where the original determination was fraudulent or was clearly erroneous or where specified conditions are met with regard to an ability to work.

We urge that multiple-impairments be considered as to their combined effects even when the impairments, when considered separately, might not constitute eligibility.

We urge that the committee mandate that subjective evidence of pain be considered relevant in the determination of disability including statements by family, friends and neighbors as well as the claimant.

We urge that work in a sheltered workshop not in and of itself be considered adequate to establish an individuals ability to meet the demands of a competitive work environment on a sustained basis. The requirement of a formal work evaluation should be mandated in law.

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[1] Disability Advocates, testimony at p. 280, Disability Amendments of 1982, Mar. 16, 17, 1982, Serial 97–54.

Legislation passed should include a provision for a moratorium on reviews for the mentally impaired. Such a moratorium has been called for by many members of the House and by the secretary of Health and Human Services. With regard to the administrative procedures indicated by the secretary, we wish such a moratorium firmly established under law. Failure to take such legislative action will mean that this moratorium may be here for the mentally impaired today when there are stories on the front page of the paper, and may as easily be gone tomorrow when the issue has disappeared. Indeed, however committed this secretary of Health and Human Services may be on this issue, no one knows how long she will remain in her post. A policy on so grave a matter cannot be so lightly given and perhaps taken away. A legislated solution, within the context of broadbased legislation, will preserve these rights whoever is secretary of Human Services or commissioner of Social Security.

We urge that the provisions of Public Law 97–455, relating to the continuation of cash benefits and continued medicare and medicaid eligibility through a hearing before an administrative law judge be made permanent. This law will expire on October 1, 1983 without action by this subcommittee and Congress.

We urge that only after a pre-determination notice and a personal face-to-face hearing to present evidence, could SSA via the determination process revise a decision, taking full weight of medical evidence into account.

The committee bill which this subcommittee will author should mandate that all medical and vocational evidence be given full weight. Standards for the kind of medical evidence should preclude the so-called "assembly-line" medical reviews which are currently the norm in disability reviews. This panel must mandate that reviews be made by qualified medical and psychological personnel in an appropriate fashion.

The committee should, in its measure and accompanying report, mandate that the Social Security Administration follow the rulings of circuit courts within a circuit until such time as the Supreme Court has ruled otherwise. In a nation fully committed to a system of justice which is fair and equitable for all citizens whatever their shapes or sizes or hues, it is inexplicable why one authority should have the power to consider itself above the law. We assure members of this panel on both sides of the aisle, that the national security is not at stake in a disability issue.

We urge continuance of payments of benefits under title I of the Rehabilitation Act of 1973 to individuals who have medically recovered and who are participating in an approved vocational rehabilitation program.

The committee bill should mandate changes in the criteria for determining a trial work period so that such periods be considered as trial work only if performed in the 15 months immediately preceding the month in which SSA begins its review, only when three months worked are consecutive and only when the individual is working at the time of review. Without altered criteria, Members of Congress will continue to hear the old refrain: "I was cut off. I have three disabilities and I have been unable to leave my home for the last . . ." We are fully aware that no legislative solution leads to immediate results but we hope that this Congress will be preparing a measure which when enacted and fully implemented will be more than a half-baked effort.

We should like to draw to the attention of the subcommittee the recent court case, *Heckler* v. *Campbell*, May 16, 1983. We suggest that the committee analyze the opinion and draft legislation which follows the law of the land as established by our Supreme Court and establish needed protections for persons with disabilities within the law.

The solution which is written by this committee is not an exercise to please one group or another or one party or another. The problems are serious and we want their solution to be serious and to withstand court challenge. A review of this recent decision will assist the subcommittee toward this end.

Disability advocates looks forward to cooperating with all members of this committee in drafting and passing a vital piece of legislation if such legislation contains the essential elements outlined above. We have been in touch with many other legislators as well as with experts. We know that such a measure will indeed receive support.

We look forward to cooperative efforts with this subcommittee and with the House. A note is in order before closing: this issue does not belong in a partisan

context. It is not the fault of any party nor should attacks be made which hinder the resolution of the issue. Everyone in this room knows that as soon as someone in Washington begins, "politics aside. . . ." Politics is anything but aside. It is out front. tI is 1983 and all of you are politicians and will be running for re-election in 1984. We hope no one is terribly shocked by this announcement.

Still, amid our election-year efforts we must joint together and we must do so especially when human life is at stake. We commend the chairman of this committee for calling for the cooperation of all parties and all factions.

We appreciate being a part of this process and hope that we can be of continued assistance to the panel and to this House as it makes the needed legislative reforms in the disability determination process.

Thank you.

SAN JOSE, CALIF., *July 6, 1983.*

JOHN J. SALMON,
Chief Counsel, Committee of Ways and Means,
U.S. House of Representatives,
Washington, D.C.

GENTLEMEN: I would like to make a statement on the Social Security Disability program on behalf of myself and the 368,000 wrongfully terminated recipants and suggest improvements to be made in the system.

(1) Cases of the 368,000 terminated victims of the current system should be reviewed by Social Security Disability. If Social Security cannot show an actual medical or mental improvement in the person terminated, the terminated person should be reinstated to Social Security Disability with full payment of back benefits. The explanation should be in plain understandable English.

(2) New termination cases should be handled as mentioned in (1).

(3) Disabled people who are to be terminated should have a face to face meeting with a representative of Social Security and should receive benefit payments through hearing of Administrative Law Judge. This means that laws passed in Dec. 1982 should be made permanent.

(4) A time limit should be made on all levels of Appeals. This includes Reconsideration, Administrative Law Judge and Appeals Council. If Social Security cannot reach a decision within 90 days at each level, the terminated person should be reinstated with full back payments. In my case I was told at each level a decision would be made within 60 days. Reconsideration and ALJ hearing took over 6 months each and my Appeals Council is now in its 9th month with no decision in sight.

(5) Any work history during appeals process should be taken into decision by Social Security Disability. How is a person to survive during this time period with no income?

(6) The provisions for determining what is considered Gainful Employment should be thrown out. The only people who would qualify would be those confined to a iron lung. Social Security is using these rules as a club against the disabled. Social Security is misinterpreting these rules.

(7) Social Security should have only professional specialist in particular fields make termination decisions. The General Accounting Office in a report on April 7, 1983 stated that nonprofessionals were making termination decisions.

(8) Social Security should be made to agree to follow decisions made by Federal Court decisions on particular Social Security Disability decisions. The Secretary of H.H.S. Margaret M. Heckler implied on Frontline telecast of June 20, 1983 "Who Decides Disability" that Social Security would not adhere to these court decisions.

(9) Meaningful legislation should be made by Congress to correct the abuses of Social Security Disability over the past 2 years.

(10) Disabled Social Security recipients should be allowed to earn up to $400.00 per month without the loss of benefits. Amounts earned over that amount should be deducted from their checks such as done with people over 65. This would enable the disabled and particularly the mentally retarded to regain a certain amount of pride in themselves and participate in the mainstream of American Society. This work could be part time or seasonal work.

(11) Low interest loans should be available to the disabled to start a home business or study for a new trade or vocational training. These once productive

middle class white and blue collar workers are anxious to contribute to the growth of America. The failure rate of such loans would be much less than other groups who now receive such loans. The current system does not provide for such actions.

(12) The current Appeals process should be scrapped. It is bureaucratic and ineffective. The individual who is appealing does not have a fair chance at appeal. At all levels the people deciding the appeal are employees of Social Security. The system should be replaced by a 3 person jury system with a judge as moderator. This would allow a fairer hearing and a tremendous cost savings on chopping the bureaucracy. If the terminated person is not satisfied with the decision, they can file suit in Federal Court.

Thank you for your time and consideration on my suggestions to reform the Social Security Disability review program.

Very truly yours,

JAMES P. GRAY.

P.S.—One of the 368,000 victims of the current Social Security Review Program.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, D.C., July 6, 1983.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Although it was not possible for the UAW to testify at the hearing on the social security disability insurance program which your Subcommittee held on June 29, 1983, we wish to set forth our views on this important subject. We ask that this communication be made part of the hearing record.

The abuses generated by the Reagan Administration's continuing disability investigation program have been extensively documented. As a result of the recent widespread publicity about the medal of honor recipient who had his benefits terminated, even the Administration has finally recognized the need to make some changes in the program.

The UAW believes that the legislation which has been introduced by Representatives Shannon and Stark—the Social Security Disability Benefit Reform Act of 1983 (H.R. 2987)—addresses the problems in the continuing disability investigation program in a balanced and comprehensive manner. We strongly support this legislation, and urge the members of your Subcommittee and the full Ways and Means Committee to report it favorably at the earliest possible time.

The Shannon-Stark bill contains two provisions which we believe are particularly important. First, it would require the Secretary of HHS to show that there has been either a significant medical improvement or change in residual functional capacity before disability benefits could be terminated. This is only fair. Rather than requiring individuals who have already been deemed eligible for disability benefits to "reprove" their disability, the burden properly should be placed on the government to show that there has been some change in condition which justifies discontinuing the benefits.

Second, the proposed legislation would make permanent the provisions in current law which permit the payment of disability benefits to be continued while an individual appeals the discontinuance of benefits to an administrative law judge. Continuation of benefits during this step of the appeals process can be justified out of simple fairness to those who have already satisfied the rigorous proofs the government requires in order to meet the definition of disability, and who are now being "re-tried". It is also warranted in light of the fact that approximately 60 percent of those who file appeals are successful and wind up having their benefits reinstated.

The UAW applauds the concern displayed by you, Mr. Chairman, and the other members of the Ways and Means Committee, concerning the serious problems created under the Administration's continuing disability investigation program. Your consideration of our views on this important issue will be appreciated.

Sincerely,

DICK WARDEN, *Legislative Director.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., May 24, 1983.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security, Washington, D.C.

DEAR MR. CHAIRMAN: I am forwarding to you a copy of a letter I received from Mr. C. Patrick Babcock, the Director of the Department of Mental Health for the State of Michigan. Mr. Babcock is concerned about the changes in the disability requirements for Social Security recipients and the subsequent effects of those changes on the already financially burdened programs at the State level.

I have also included a press release from the Michigan Department of Mental Health and a study prepared by the State of Michigan Interagency Task Force on Disability from Mr. Babcock.

I would appreciate your contacting me should your Committee take any action regarding this matter.

With kind regards, I am,

Sincerely yours,

WILLIAM D. FORD,
Member of Congress.

Enclosures.

DEPARTMENT OF MENTAL HEALTH,
Lansing, Mich., May 2, 1983.

Hon. WILLIAM D. FORD,
Cannon House Office Building,
Washington, D.C.

DEAR BILL: Attached is a report prepared by Michigan's Interagency Task Force on Disability, a group composed of representatives of six human service department directors. This report, entitled *The Disability Controversy*, documents the discrepancy between apparent Congressional intent regarding eligibility for disability benefits and the way the Social Security Administration (SSA) has implemented the nation's disability program. The report documents how SSA's arbitrarily narrowed criteria have served to reduce eligible beneficiaries by 50 percent in the last few years, i.e., how SSA has changed the rules so that thousands of disabled individuals are now wrongly considered "able-bodied."

I hope this report, and its recommendations, will assist you and your staff in fine tuning the program legislatively and administratively to ensure that the safety net for non-gainfully employable individuals remains intact.

Sincerely,

C. PATRICK BABCOCK,
Director.

Attachment.

[News Release, Michigan Department of Mental Health, C. Patrick Babcock, Director]

MAY 4, 1983.

Federal officials will toss a $100 million problem in the lap of state government—if current Social Security practices are not changed.

That's the conclusion of a new report currently being distributed to Michigan's congressional delegation by the state's Interagency Task Force on Disability.

Department directors approving the report include C. Patrick Babcock, Mental Health; Sister Agnes Mary Mansour, Social Services; S. Martin Taylor, Labor; J. Phillip Jourdan, Management and Budget; Phillip E. Runkel, Education; and Gloria R. Smith, Public Health.

All are alarmed because the federal Social Security Administration is denying benefits to thousands of Michigan residents who had previously qualified for federal assistance to the disabled.

In addition, stricter eligibility requirements make it more difficult for new applicants to qualify for Social Security benefits.

"Under current federal guidelines, it is extremely difficult for disabled Michigan residents to qualify for social security assistance," said Mental Health Director Babcock. "The only alternative fo many of these persons is to look to the state for help. We believe if Congress reviews the intent of Social Security disability payments, it will agree with Michigan that today's federal standards are too restrictive."

DSS Director Sister Agnes Mary Mansour explains that the Supplemental Security Income program was established to provide a "safety net" for the nation's needy disabled citizens.

"The net has slowly disintegrated as the Social Security Administration has increased the severity of the disabilities qualifying for benefits. Thousands of clearly disabled Michigan citizens have been denied help," says Sister Mansour. "Continued benefits for additional thousands are in jeopardy. We ask that Congress repair the safety net by assuring that handicaps and disabilities are evaluated under rules that are fair, reasonable and compassionate."

Babcock points out that more than 40 percent of those undergoing periodic reviews are declared ineligible for further benefits. Approvals of new applicants for assistance are at an all-time low. Last year, approval rates for the SSDI and SSI programs were about half the rate of six years earlier.

"Current review practices are creating a problem for both physically and mentally disabled persons," said Babcock, "but the impact on persons with mental disabilities is particularly pronounced."

Four different studies identified by the Task Force have attempted to answer the question of what happens to applicants who are denied benefits. All the studies indicate that between half and two-thirds of denied applicants have no earnings during the five years following rejection. Only one in ten have earnings of more than $300 per month.

The report by Michigan's Interagency Task Force on Disability makes four recommendations to Congress:

(1) The Social Security Administration should set aside the majority of the more stringent case review practices adopted since 1976.

(2) Comprehensive improvements should be made in federal procedures governing disability investigations.

(3) Definitions of disability should be revised and shoud give weight to the fact that physical and mental impairments, in combination with lack of work experience, limit employment opportunities far more than the disability, itself, might indicate.

(4) Long-term studies should be undertaken to compare persons approved for benefits with those who are denied benefits. These studies should particularly focus on earnings, if any, of those persons denied benefits.

The report for Michigan's Interagency Task Force on Disability was written by Phil Michel, a staff member of Michigan Department of Social Services.

One section of the report describes a recent study, in Michigan, of 158 people who were terminated from participation in the Supplemental Security Program. Nearly half subsequently became eligible for state general assistance, aid to families with dependent children, or Medicaid. An additional seven percent entered prisons or jails, five percent are receiving outpatient mental health services, and two percent died.

In effect, denial of benefits simply led to transfer of many beneficiaries from the federal social security programs to other forms of public assistance.

It is estimated that Michigan will eventually be called upon to replace $123 million in annual benefit payments for those persons who lose federal benefits and subsequently qualify for state entitlement programs.

The SSI/SSDI Disability Controversy: How and Why the Social Security Administration Has Reduced the Number of SSI/SSDI Beneficiaries

(Prepared by State of Michigan Interagency Task Force on Disability)

ABSTRACT

This report is nonpartisan. It focuses on bureaucratic activities undertaken by the Social Security Administration (SSA) during the tenures of President Carter and President Reagan. It describes the effects of adjustments in the federal disability program which have exceeded apparent Congressional intentions. As such, this report is targeted at members of Congress: those who have the authority, through oversight, to maintain the nation's disability program on its expected course.

Specifically, the report discusses the abrupt decline in the total number of individuals benefitting from programs authorized under Titles II and XVI of the Social Security Act: the Social Security Disability Insurance program (SSDI) and the Supplemental Security Income program (SSI), respectively. It examines the years between 1976 and the present during which, after years of legislative

stability and caseload growth, the numbers of approvals (referring to benefit awards to new applicants) and continuations (referring to continuation of payment to current recipients) have steadily declined.

Michigan asserts that these reductions are due to the more stringent procedures which the Social Security Administration (SSA) has required state Disability Determination Services (DDS's) to adopt. These more narrow disability examination procedures, in and of themselves, will be shown to have reduced the numbers and percentages of new approvals. Furthermore, as large numbers of current recipients undergo mandatory case reviews, the negative effects of revised procedures is passed onto an even larger portion of the disabled population, i.e., over 40% of those undergoing periodic reviews are declared ineligible for further benefits. Consequently, many incoming applicants *and* current recipients—all disability cases—are becoming part of a growing number of so called "ineligibles."

Most striking is the estimated impact which increased cessations will exert on state and local budgets. Should narrower standards continue to reduce the total pool of eligibles by 40% *and if* (as some states have found) 30% of those denied eventually depend on state-financed programs, states can expect General Assistance (GA) and Aid to Families with Dependent Children (AFDC) caseloads to increase by about 730,000 persons nationwide.

In addition to the reductions described above, SSA is supporting new legislation and administrative changes which will deny benefits to even greater numbers of applicants and current recipients.

This paper reviews the history of, and the rationale underlying, recent administrative changes in the disability program. The paper also recommends that Congress undertake the following actions:

1. Direct the Social Security Administration (SSA) to set aside the majority of the more stringent case review practices adopted since 1976.

2. Continue legislative activity begun in the 97th Congress by enacting comprehensive statutory improvements in Continuing Disability Investigation (CDI) procedures. Procedural improvements which merit inclusion in statute are described on pages 13–14 of this report.

3. Recognizing that most SSI recipients have had only a tenuous connection with the labor market, direct SSA to adopt a definition of disability for the SSI program which is separate from the meaning of disability applied in the SSDI program. A new SSI definition should give weight to the fact that physical or mental impairments, coupled wih negligible work experience, limit the employability of SSI-eligible individuals far more than their impairments alone may indicate.

4. Direct SSA to undertake a longitudinal comparison of persons approved and denied benefits. Such a study should seek information pertaining to the subsequent earnings, if any, of denied applicants.

EXECUTIVE SUMMARY

Downward Caseload Fluctuations

In 1976, the federal Social Security Administration (SSA) began removing flexibility from the disability review procedures imposed upon state Disability Determination Services (DDS's). The result of tighter procedures has been a continuing decline in the number of applications approved for benefits under both the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. By 1982, the lower approval rates for both programs represented a halving in the number of approvals documented six years earlier in 1975.

Until SSA began largescale reviews of all current recipients in March of 1981, these gradual caseload reductions remained relatively obscure. Largescale increases in the number of reviews, termed "Continuing Disability Invesitgations (CID's)" caused multiple thousands of clients to be reevaluated under more rapid procedures which had, by 1981, become standard. These periodic reviews using narrower standards caused nearly half of the beneficiaries examined to be declared ineligible for further benefits. Because many of the recipients terminated as a result of CDI's remained "disabled" under almost any definition of that word, these "erroneous cessations" came quickly to public and Congressional attention.

Current Legislation

A number of bills proposing revisions of CDI procedures were introduced in the 97th Congress; several others are now pending in the 98th Congress. Much

of the legislation proposed in 1982 focused on periodic review procedures. The authors of this report applaud the 97th Congress, especially Senator Carl Levin and other supportive members of this state's delegation, for their determination in enacting H.R. 7093, a disability reform bill which addressed several obvious weaknesses in the periodic review process. This bill received Congressional approval near the end of the lame duck session, and became Public Law 97–455 subsequent to the President's signature in January 1983. P.L. 97–455, as emergency legislation, mandated one temporary and three permanent improvements in the periodic review process for Title II (SSDI) beneficiaries:

1. It allows beneficiaries who are appealing a termination decision to request that benefits be continued until the appeal has been completed, i.e., through the rendering of a decision by an Administrative Law Judge (ALJ). This provision expires in June 1984.

2. It grants discretion to the Secretary of HHS in determining how many CDI's each state can appropriately review.

3. It mandates that, by January 1, 1984, all initial appeals (reconsiderations) of negative decisions will be conducted face-to-face and will be evidentiary in nature. The bill further specifies that beneficiaries requesting reconsideration will be informed of opportunities to be represented by counsel and to introduce all available evidence at the reconsideration.

4. It ensures, for the first time, that Congressional Committees will receive semiannual reports on periodic reviews (the number carried out and the human impact of these reviews).

To date, bills introduced in the 98th Congress indicate an understanding of the need for deep and comprehensive refinements in the way disability is determined and cases are periodically reviewed. S. 476, a bill sponsored by Senator Carl Levin of Michigan, includes several provisions whose enactment into law would make periodic review processes more consistent with Congress' reasons for passing the Social Security Amendments of 1980.

Specifically, S. 476 would:

Prevent the termination of benefits unless SSA proves that the beneficiary, due to medical improvement, has become more capable of gainful employment. The bill requires that SSA's decisions be based on medical information which is gained from treating physicians and covers the previous 12-month period.

Permanently plac in statute the opportunity for beneficiaries to request that benefits be paid until an appeals decision is rendered by an ALJ.

Require SSA to promulgate all disability review standards in the form of regulations, i.e., proposed modifications would be subject to public notice and comment.

H.R. 1766, sponsored by Congressman Robert Davis of Michigan, addresses similar problems in the case review process. Specifically, H.R. 1766 mandates that SSA provide evidence of medical improvement before SSA ceases benefits on the grounds that the individual in question is "gainfully employable." H.R. 1766 also requires that beneficiaries undergo periodic review within three years of gaining disability benefits; subsequent case reviews would be conducted at the discretion of HHS' Secretary, rather than in accordance with the rigid triannual schedule mandated in current law.

Regardless of legislative reforms affecting current beneficiaries, the number of new approvals will remain historically low. To illustrate the need for legislative action to ensure that benefits are awarded to eligible new applicants, this report reviews the history of recent disability laws and recommends legislative action designed to provide a "safety net" for the truly needy.

Stable Statutory Definition of Disability

Legislatively, the definition of disability is the same for the Title II (Social Security Disability Insurance) and Title XVI (Supplemental Security Income) programs. The basic definition of disability in the Social Security Act reads:

"The term "disability" means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months . . .

". . . an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which

exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applies for work . . .

The original disability definition was drafted in 1954, and was revised twice in the mid-1960's. Prior to 1965, the statutory definition required disabilities to be of "long, continued and indefinite duration." In 1965, the "12 month duration" requirement was substituted for the previous, more ambiguous criterion. In 1967, the phrases defining work "available in the national economy" were added. The current definition, with minor variations, is used in the SSDI, SSI and Medicaid programs.

The statutory definition of disability is considered to be a strict definition which only the most severely disabled can meet. It is designed to distinguish between: (1) those who are out of work because of their medical impairment; and (2) those who could work even though impaired to some extent.

Although the definition of disability has not changed in fifteen years, the percentages of applicants approved under this stable definition has decreased substantially. For example: "The percentage of applicants approved at the initial point of application (without challenging a denial through reconsideration appeal) dropped from 46% in 1968 to 22% in 1980."

Stated in other terms: "In 1968, 568 of every 100,000 insured workers were awarded benefits. By 1981, this ratio had dropped to 357 awards for every 100,000 insured workers, making the 1981 rate the lowest in the history of the SSDI program."

Reasons suggested to explain downward caseload fluctuations have included: changes in the composition of the insured population, improvements in the general health of the population, increasing denials based on non-medical factors and a tighter "adjudicative climate." While all of these factors may have affected caseload fluctuations, only a much tighter "adjudicative climate" can explain the drop from 40% to 22% in initial approvals which occurred between 1976 and 1981.

The term "adjudicative climate" refers to the bases upon which disability cases are settled, i.e., the formal and informal procedures underlying decisions to grant or deny benefits. Over time, the prevalence of certain disability determination outcomes has substantially changed (from more awards prior to 1975 to more denials after 1975). This tighter adjudicative climate has often, been attributed to the mandates of Congress. For example, publications from both the General Accounting Office (GAO) and the SSA have suggested, respectively, that the adjudicative climate may have changed due to "a decade of prompting from the Congress" and due to "interest, on the part of Congress as well as the executive branch in the effect of program administration on costs. . . ." Although Congress has been concerned with caseload growth, little information exists to support a conclusion that Congress expected SSA to implement its legislation in a manner which would cut in half the number of new disability beneficiaries.

SSA Restrictions Exceed Congressional Intent

Congress enacted two major legislative acts pertaining to disability during the period in question: Public Law 95–216, the "Social Security Amendments of 1977" and Public Law 96–265, the "Social Security Disability Amendments of 1980." During hearings for both the 1977 and 1980 legislation, SSA presented testimony regarding its problems with the definition of disability. Congress, in both instances, declined to change the statutory meaning of disability, in spite of SSA's stated problems. SSA, ignoring Congress' reluctance to change existing provisions, implemented administrative changes which led to more severe applications of the disability definition.

The statutory definition of disability does not describe how the definition is to be applied in individual cases. These criteria are spelled out in regulations and operating instructions promulgated by SSA. State Disability Determination Services (DDS's), under contract to SSA, apply regulations and instructions in making eligibility determinations.

Although the negative administrative changes were implemented by state DDS's, the procedures followed were minutely specified by SSA. Specifically, the half-page statutory definition was transformed by SSA into 108 pages of federal regulations. These regulations have been further expanded into three large, loose-leaf binders containing instructions for use by disability examiners in developing eligibility recommendations. The administrative modifications having the greatest impact on how the definition is applied can be summarized as follows:

"Severe" Impairments Redefined as "Slight" Impairments.—The minutely-detailed instructions described above were revised ("clarified" by SSA guidelines) so as to change impairments which were formerly classified as "severe" (hence, eligible for approved benefits) into impairments classified as "slight" (hence, ineligible for approved benefits).

Fewer Non-Listed Impairments Classified as Disabling.—State DDS's formerly exercised latitude in deciding whether an impairment (or group of impairments) not specifically listed in the regulations had a disabling effect equal to listed impairments. SSA restricted the ability of state examiners to exercise this discretion. As a result, the number of allowances classified as "equal to the listings" dropped from 44% in 1975 to 9% in 1982.

Quality Assurance Reviews Ignore Wrongful Denials.—Additional "de facto" policy was manufactured by SSA through changes in quality assurance procedures. Specifically, numerous state-approved cases were returned as erroneous to state agencies. Virtually all such quality assurance reviews were targeted at benefit approvals; few, if any, quality assurance efforts were focused on the prevention of wrongful denials.

Reversals by ALJ's

As the approval rate of initial determinations declined, more applicants began to request hearings before Administrative Law Judges (ALJ's). These hearing officers frequently found that original denials were made in error; benefits were awarded accordingly.

This "reversal rate" (i.e., the frequency with which ALJ's overturn DDS denials), was addressed by Congress in Section 304(g) of the 1980 legislation which directed the Secretary of Health and Human Services to "implement a program of reviewing, on his own motion, decisions rendered by ALJ's as a result of hearings . . . and . . . report to Congress by January 1, 1982, on his progress." The Secretary subsequently reported that ongoing reviews were not implemented until October 1, 1981, and "because the ongoing review program was only recently implemented, significant data about the results are not yet available." In his response to Congress, the Secretary also reported that steps designed to reduce the reversal rate were either planned or already implemented. It is important to note that the overall direction of planned steps to lower the reversal rate focused on bringing ALJ decisions into agreement with initial DDS denials (rather than restoring discretion to DDS's so as to prevent erroneous decisions).

Today, approximately one out of every four new beneficiaries is forced to establish eligibility through a protracted, often expensive ALJ hearing process. When 25% of all new recipients must prevail at a hearing before benefits are rightfully awarded, it is clear that changes are needed. However, it is not at all clear that such change should emphasize application of more stringent criteria and rules by DDS's.

Social Security Advisors Address the Definition

In addition to Congress, the definition of disability has been addressed by two recent SSA advisory groups. The Advisory Council concluded in its 1979 report that: "A majority of the council recommends that the definition of disability for benefits under Title II be liberalized for older workers . . .

"A majority of the council also recommends that a more liberal definition of disability be used for determining eligibility for SSI disability benefits under Title XVI than is used for determining eligibility for social security disability benefits."

The National Commission established under President Carter wrote that: "The Commission finds little evidence that the definition of disability in the law is too liberal or that it allows benefits to be paid to people who are able to support themselves."

Employment and Death Statistics of Denied Applicants

A close examination of the circumstances faced by applicants who are denied benefits starkly affirms the conclusions reached by the advisory groups quoted above. Four studies of the employment achieved by applicants subsequent to denial report that between half and two-thirds of the denied applicants have $0 earnings during the five years following rejection. Only 10% had earnings of more than $300 per month.

One of the studies indicates that 11% of the younger males denied at all levels through ALJ hearings died within the next five years. This death rate is approximately three times the mortality rate documented among members of the same

age group in the general population. It is essential to point out that death rates for both denied applicants and approved SSDI recipients differ by only five percentage points, with the rate for approved beneficiaries equalling 16%.

Disability review procedures purport to identify individuals whose illnesses are expected to prevent gainful employment and/or to cause death. The studies described above show little difference between denied applicants and approved applicants on two factors indicative of severe disability: employability and potential for death. These data support the conclusion that many wrongfully denied applicants continue to sustain life-threatening conditions and are unable to work long after SSA's restrictive criteria have categorized them as "able-bodied."

Need for a Separate SSI Definition of Disability

Although more rigid disability determination processes have been applied to both the SSDI and SSI programs, the individual effect of additional denials is more cruelly felt by SSI applicants. Profiles of SSI applicants show they are unlikely to have other resources to fall back upon. As noted in the 1979 Report of the Social Security Advisory Council:

Since disability insurance benefits are paid without regard to need and can, in many circumstances, provide fairly adequate income support, it is appropriate to restrict eligibility to those whose medical impairments are quite severe. However, in the SSI program, where benefits are generally lower and are paid only to those with little or no other income and only limited assets, such strict standards for eligibility are neither necessary nor desirable. *The SSI program should be viewed as a safety net.* It now protects those whose impairments are severe enough to qualify for disability insurance, but whose social security benefits are insufficient to provide a decent level of income. It should also protect those in need whose impairments are not quite severe enough to qualify them for disability insurance, but are severe enough to prevent them from working when the impairments are combined with other personal and economic factors that cannot be measured with reasonable objectivity. (Emphasis added.)

In summary, applicants for, and recipients of, SSI differ from their SSDI counterparts in the immediacy of their needs, the amount of potential benefits, their age, their disabling conditions, and their employment history. In view of the multitude of differences, a single definition of disability for both programs is more of a bureaucratic convenience than a logical decision.

State Impact

Artificially low SSI and SSDI approval rates will exert a substantial impact on the budgets of state and local government. For example, in Michigan, about two and one-half percent (2.5%) of the total state population receives SSI disability or SSDI benefits. Payments received by Michigan recipients currently equal about $85.5 million per month—$1.026 billion per year. Estimates based on small samples indicate that about 30% of the applicants denied benefits will become dependent on General Assistance (GA) or Aid to Families with Dependent Children (AFDC). Some will also end up in jails, prisons and mental hospitals.

Continued application of the current stringent procedures can be expected to reduce both SSI and SSDI caseloads and payments by about 40 percent (although CDI's are currently terminating benefits about 45 percent of the time). Should these estimates prove to be accurate, Michigan will eventually be called upon to replace $123 million in benefit payments which should rightfully be paid from federal monies.

CONCLUSIONS

Administrative steps taken by SSA since 1976 made an already strict definition of disability more rigid. These steps have cut the approval rate for initial applicants under both SSDI and SSI approximately in half. In addition, the 1980 Disability Amendments required periodic reviews for all active disability cases. SSA conducts these periodic reviews under the more severe procedures developed since 1976. Consequently, benefits are now terminated for individuals who were approved under the procedures in existence before 1976.

Studies show that the definition of disability, as restricted by SSA, fails to separate those able to obtain work from those who, because of their impairments, are unable to obtain gainful employment. Very few applicants, whether their benefit applications are approved or denied, ever work full-time or otherwise again.

SSA's efforts to reduce the number of denials reversed at the hearings level are ill-conceived at best. There is little evidence supporting a conclusion that ALJ's routinely allow benefits beyond the bounds of law and regulation.

The strict definition of disability developed for the SSDI program is inappropriate for the SSI disability program. The SSDI definition is predicated on the assumption that eligible individuals have a history of participation in the work force. This precondition is seldom, if ever, met by SSI applicants.

RECOMMENDATIONS

1. Congress should direct the Secretary of Health and Human Services to set aside the majority of the more stringent practices required of the Disability Determination Services since 1976. In particular, the practices restricting state agencies' use of "equal to the listing," and those modifying the distinction between severe and slight impairments, should be rescinded. New disability regulations should be developed by a panel including experts in the fields of vocational rehabilitation, and labor markets, as well as medicine. These regulations should specify that the expertise of all three fields be considered in individual determinations of disability.
2. Congress should amend the Social Security Act so that the following improvements in both initial and periodic disability investigation procedures are permanently initiated.
   a. Permanently amend the Social Security Act to ensure that clients appealing CDI cessations can receive benefits through the ALJ hearing.
   b. Mandate consideration of all available medical evidence, especially information from treating physicians, and including information used for the initial approval of eligibility.
   c. Require that SSA promulgate all disability standards in the form of regulations subject to public notice and comment.
   d. Prohibit SSA from terminating benefits unless SSA can prove (based on evidence of significant medical improvement) that the beneficiary is capable of significant gainful employment.
3. Congress should adopt a separate definition of disability for the SSI program. This definition should recognize that physical or mental impairments occurring in conjunction with a history of tenuous or non-existent connection to the labor force preclude any reasonable expectation of gainful employment. While some such individuals may be physically able to work in an abstract sense, their lack of experience and adaptation to the work place present a significant additional handicap that can seldom be overcome, given the present resources allocated to rehabilitation.
4. Congress should direct the Secretary of HHS to undertake longitudinal studies of persons denied SSI and SSDI benefits, seeking to identify those characteristics, diseases and impairments that are most directly correlated with continued unemployment. The findings of the study should be used to modify future disability evaluation procedures to more adequately distinguish between those applicants who will be able to find employment and those who will not.

Analytical Portion of Report

STATEMENT OF PROBLEM: UNAUTHORIZED SSA PROCEDURAL CHANGES

Benefits awarded to the disabled under Titles II and XVI have fallen steadily and dramatically since the mid-1970's. The following comparative statistics illustrate the extent of the caseload reduction documented in the years between 1975 and the present.

SSDI: Approvals drop by 202,800

In 1975, the Social Security Administration (SSA) processed 1,237,000 applications for Social Security Disability Insurance (SSDI). In that same year, benefits were awarded to 592,000 applicants for an approval rate of 47.8 percent. In 1980, SSA processed 1,159,000 SSDI applications and awarded benefits to 389,200 individuals for an overall approval rate of 33.6 percent [1]

SSI: Approvals drop by 118,000

During the same years in question, parallel changes were occurring in the disability portion of the Supplemental Security Income (SSI) program. In

[1] Mordechai E. Lando, Alice V. Farley, and Mary A. Brown, "Recent Trends in the Social Security Disability Insurance Program," Social Security Bulletin, August, 1982, volume 45, No. 8, page 7, table 3.

1975, 436,490 disabled SSI recipients were granted benefits. By 1980, the number of new beneficiaries had decreased to 318,699.[2]

An examination of the period from 1975 to 1982 reveals that the decline in awards continued at least through the first quarter of last year. Specifically:

SSDI awards for the first quarter of 1982 were 55 percent of the first quarter 1975 level.

SSI disability awards for the first quarter of 1982 were 54 percent of the first quarter 1975 level.[3]

SSA spokesmen have proffered a number of reasons for these continuous declines, including a tentative suggestion "that state agencies and disability examiners have become more conservative in the way in which they interpret and apply the standards."[4]

Others, however, have been more direct in linking declining awards to stringent practices initiated by SSA. A recent GAO study states that SSA "* * * has made major changes in the criteria and guidance used in the disability determination process."[5] In a December 1981 letter to the Region V Assistant Regional Commissioner, the Director of the Wisconsin's Disability Determination Bureau stated that "the current adjudicative climate involving mental impairments seems to be one of deny, deny, deny." In summary, the most plausible explanation for this nearly 50 percent reduction in approved applications is a substantial tightening of the disability criteria implemented by SSA.

In addition to influencing caseloads in a downward direction, the more rigid criteria have contributed directly to a number of other changes throughout the system. First, an increased number of beneficiaries who undergo periodic review are determined to be employable.[6] Second, states with state-financed relief programs have noted an increase in the number of applicants. Some such states have begun assisting SSI applicants through the appeals process.[7] Third, SSA has initiated attempts to constrain appeals decisions by issuing minutely-detailed instructions resembling those imposed upon state Disability Determination Services (DDS's).

Congress retains stable definition

The definition of disability has virtually been a perennial topic for Congressional hearings. Nevertheless, the definition has not been changed since Congress, in 1967, tightened criteria to control the direction of judicial rulings emerging from appealed cases. Recent major pieces of Social Security legislation are Public Law 95–216, "The Social Security Amendments of 1977," and Public Law 96–265, "The Social Security Disability Amendments of 1980."[8] Although the legislative history of both acts indicates that possible changes in the definition of disability were mentioned during hearings, no changes were approved.[9,10] Following are summaries of the content and impact of the 1977 and 1980 bills.

In the 1977 Act, Congress increased the payroll tax deduction used to fund disability programs. It also revised the formula for cost-of-living adjustments (COLA's) to prevent newly eligible recipients from receiving a double benefit (once from COLA increases and a second time from the use of inflated average wages in calculating benefit payment levels).

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[2] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, July, 1982, volume 45, No. 7, page 41, table M–20.

[3] "Current Operating Statistics," Social Security Bulletin, December, 1975, volume 38, No. 1, page 41, table M–17; page 46, table M–24.

[4] Mordechai E. Lando, Alice V. Farley, and Mary A. Brown, "Recent Trends in the Social Security Disability Insurance Program," Social Security Bulletin, August, 1982, volume 45, No. 8, page 11.

[5] Gregory J. Ahart, "Statement before the Subcommittee on Oversight of Government Management Committee on Governmental Affairs, U.S. Senate on Social Security Administration's Program for Reviewing the Continuing Eligibility of Disabled Persons," U.S. General Accounting Office, enclosure I, page 12.

[6] Disability Amendments, Public Law 96–265, Social Security Disability Amendments of 1980. Senate Report No. 96–408, table 13, page 34.

[7] More than 2 years ago, Michigan recognized the potential impact on the SSI program of the more stringent definition. In response, a program was designed to assist SSI applicants through the appeals process. While this advocacy approach has shown itself to be cost-effective and to have a significant impact on individual cases, it is a temporary stopgap rather than a long-term solution.

[8] Implementation of section 304(g) of Public Law 96–265, "Social Security Disability Amendments of 1980." Report to the Congress by the Secretary of Health and Human Services, January, 1982, page 8.

[9] Social Security Amendments, House Report No. 95–702—Part I, Social Security Amendments of 1977, pages 20–21.

[10] Social Security Disability Amendments of 1980, Senate Report No. 96–408, page 34.

The 1977 amendments have proven to be largely effective. Specifically, the allocation of increased payroll taxes to the disability trust fund served to rescue the fund from potential bankruptcy. The 1977 amendments reduced the average monthly awards for newly eligible recipients to within $2 of the monthly payments received by ongoing beneficiaries.[11]

In the 1980 Act, Congress mandated several changes designed to prevent a permanent loss of benefits on the part of recipients who attempt a return to work and subsequently fail to find or hold a job. The Act also established ceilings on family benefits to assure that SSDI benefit payments to low wage disabled workers would not surpass the earnings they received as healthy members of the work force. Additionally, the Act strengthened federal control over state DDS's, the agencies that determine an individual's eligibility to receive disability payments under the law. Finally, SSA was mandated by the Act to review the status of disability recipients every three years.

The 1980 amendments, with one exception, have not been in effect long enough for definite trends to become apparent. One exception is the three-year periodic review which the Act imposed on SSA. The implementation of this requirement, in conjunction with the impact of stringent disability criteria on the process, are well known, if not notorious.

The 1980 legislation was prompted, at least in part, by two General Accounting Office (GAO) reports. These reports asserted that the files of many SSI and SSDI recipients lacked proof of continued eligibility under the revised review procedures.[12, 14] Once one realizes that the beneficiaries studied by GAO were subject to changing eligibility rules, the report findings offer a clearer perspective. What is startling is the extent of the impact exerted by changed eligibility determination procedures. The magnitude of the impact is illustrated by the results of these periodic reviews: nearly one-half of the active cases investigated were terminated after review under the current standards.[15]

SSA argues its ability to rationally target in initial periodic reviews, those few cases most likely, upon re-examination, to justifiably be found ineligible. Even granting this possibility, it is inarguable that the definition of disability, as applied, has changed. The startling results of one study indicate that impairments remained the same or even worsened in 35 percent of the cases denied after periodic review.[16] A second study conducted by the Social Security Administration reported that 9.7 percent had shown no improvement.[17]

The Social Security study outlines "characteristics of claimants being removed from the rolls." In an accompanying memo it is suggested that the report "be used to rebut allegations appearing in the media as to the types of persons we are removing from the rolls" and "to respond to congressional concerns." Using aggregate statistics the report concludes that there is a "strong tendency for cessations to involve younger workers, with good educational competence and an advantageous occupational background." Yet the more detailed statistics in the body of the report show that:

(1) Of those age 55 and above at the time of review, 42 percent were found ineligible for further benefits. Of those age 60 and above, 60 percent were found ineligible.

(2) Of those who have been receiving benefits between 9 and 12 years, 80 percent were found ineligible at review.

(3) Sixty-four percent (64 percent) of those who have been receiving Social Security benefits for 14 or more years were found ineligible when reviewed.

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[11] Monthly Benefit Statistics, No. 8, Summary Program Data, U.S. Department of Health and Human Services, table 1, page 1.

[12] 1982 Annual Report, Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, Communication from the Board of Trustees, Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, April 1, 1982, U.S. Government Printing Office, page 3.

[13] Report to the Congress of the United States, HRD–81–48, March 3, 1981, "More Diligent Followup Needed to Weed out Ineligible SSA Disability Beneficiaries."

[14] U.S. General Accounting Office, HRD–78–97, April 18. 1978.

[15] Senator Levin, testimony under S2674 in Congressional Record, volume 128, No. 82, June 24, 1982.

[16] Statement of Gregory J. Ahart, Director, Human Resources Division Before the Subcommittee on Oversight of Government Management Committee on Governmental Affairs United States Senate on Social Security Administration's Program for Reviewing the Continuing Eligibility of Disabled Persons, U.S. General Accounting Office, May 25, 1982, pages 18–19.

[17] September 23, 1982 memo and attachments to Commissioner of Social Security from Associate Commissioner for Assessment.

(4) Thirty-nine (39) of the cases reviewed had never worked. These were originally found eligible for adult disabled children or disabled spouses benefits. Of these individuals with no history of work, there were 14 (36 percent) found able to work at review.

Advisory panel recommendations

Section 706 of the Social Security Act requires that an Advisory Council be appointed every four years to review, among other things, the status of the disability insurance portion of the Act. The most recently established Council submitted a report on December 7, 1979.[18] The 1977 Social Security Amendments established an advisory body known as the National Commission on Social Security, also charged with reviewing various aspects of the disability program. This latter Commission submitted its report in March of 1981.[19]

Neither the Council nor the Commission described above recommended tighter disability criteria. On the contrary, a majority of the Council members recommended, on page 148 of their full report, that "the definition of disability under Title II be liberalized for older workers" and "that a more liberal definition of disability be used for determining eligibility for SSI." The Commission noted, on page 198 of its full report, that award rates had been declining recently; however, they found "little evidence that the definition of disability in the law is too liberal or that it allows benefits to be paid to people who are able to support themselves."

It is interesting to note that SSA's response to other recommendations made by both the Council and the Commission have often been contrary to advisory intentions. For example:

The Council supported, on page 157, a House Bill mandating increases in the volume of Continuing Disability Investigations (CDI's). Increased CDI's, it was projected by advisors, would reduce disability expenditures by .03% over the subsequent 25 years. This reduction could be achieved by paying benefits to 900 fewer disabled workers (of a total beneficiary population of 2.8 million people in 1979). Rather than 900 people, about 107,000 people were determined to be ineligible during the first year SSA increased the volume of redeterminations.[20]

The Commission noted, on page 195, that "the determination of whether an impairment constitutes a disability is a matter of judgment based on the vocational as well as the medical evidence available." Nevertheless, SSA has proposed to greatly restrict the consideration of non-medical (vocational) factors.[21]

The Commission recommended, on page 224, that "appeals council review (should) become a significant element in a quality control program" for ALJ hearings. This recommendation would largely have been satisfied had SSA acted expeditiously to implement section 304(g) of P.L. 96–265, the Bellmon Amendment. However, as SSA's January 1982 report stated, "The ongoing review program was only recently implemented, significant data are not yet available."[22]

In brief, neither Congress nor two federally authorized advisory panels, recommended substantial tightening of the disability criteria. In fact, more flexible criteria were recommended.

SSA's presumption: An increasing caseload means a healthier caseload

The initial impetus to tighten eligibility criteria appears to have been stimulated by the following perception within SSA: The case level was increasing because "progressively healthier individuals have been granted benefits, and * * * progressively healthier individuals have been allowed to stay on the rolls."[23] Based on this belief, and without any legislative change in the definition of dis-

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[18] "Social Security Financing and Benefits," reports of the 1979 Advisory Council on Social Security, December 7, 1979.

[19] "Social Security in America's Future," final report of the National Commission on Social Security, March, 1981.

[20] "Social Security Information Items," July, 1982, page 1.

[21] Subcommittee on Social Security of the Committee on Ways and Means, U.S. House of Representatives, Reagan Administration Disability Proposals, WMCP: 97–23, October 20, 1981, page 3.

[22] Implementation of section 340(g) of Public Law 96–265, "Social Security Disability Amendments of 1980," report to the Congress by the Secretary of Health and Human Services, January, 1982, page 31.

[23] Disability Amendments, Public Law 96–265, Social Security Disability Amendments of 1980, Senate Report No. 96–408, page 32.

ability, SSA tightened disability criteria and reduced the 1981 award rate to "the lowest rate in the history of the program." [24]

There is little evidence to support the assertion that a larger caseload means a healthier caseload, or that a "healthier" caseload contains significantly more who are able to work. The primary evidence provided by SSA in support of the "larger, hence healthier" argument is a decrease in mortality. Other causes of caseload growth suggested by SSA over the years include: [25, 26, 27]

In 1967, the methods for developing evidence of disability and for assessing the vocational impact of an impairment became more effective; and knowledge regarding the protection and available benefits became more widespread;

In 1974, the SSI program came into existence;

In 1976, benefit payments increased;

In 1976 and 1981, applicants experienced increasing success in reconsiderations and appeals; fewer recipients recovered; unemployment increased; and the social acceptance of receiving government benefits increased.

As this report will show, none of the factors causing caseload growth ceased their influence in 1976. In other words, one cannot attribute the post-1976 decline in both new approvals and continuations to the disappearance of these factors; their effects continued from 1976 to the present.

For its part, SSA has suggested that the decline in beneficiaries is due both to improved health status and an increase in denials based on non-medical factors.[28] Recent testimony before the National Commission on Social Security shows that SSA's "improved health" argument is insufficient to explain the ongoing drop in benefits awards. This testimony states "* * * rather than a decline in the prevalence of work disability, we appear to have been experiencing an increase (in disability)." [29] SSA argued that award rates shrank because more non-medical denials were processed. This argument is only partially explanatory. A recent article indicates that "much of the decrease * * * was due to factors other than an increase in ineligible applicants." [30]

SSA's logic, when stripped to its bare bones, presumes that if fewer people die, then more people must be able to work. To understand SSA's fallacious assumptions, certain specific correlations between eligibility and employability must be addressed. First, one must ask whether those applicants who are allowed benefits can actually work and are, therefore, abusers of the system. Since some argue that benefits, in and of themselves, remove the desire to work, this question may not be answerable in practice. Second, and conversely, one may ask whether those applicants who are denied benefits are actually unemployable and are, therefore, victims of unreliable disability criteria. An answer to this question is available, and is discussed below.

An SSA report of applicants denied benefits during the first year of the SSDI program stated: "It would be logical to expect that a significant number of (denied applicants) in the study "* * * would resume employment." The report goes on to say that, "relatively few (denied applicants) earned anything at all and only a small group of those who did, earned enough to provide even a minimum standard of living." [31]

Every subsequent study located shows similar results. For example, a study by a staff member of the National Commission on Social Security Reform published in the September 1982 Social Security Bulletin matched unhealthy early retirees who received benefits with similarly unhealthy retirees who did not receive benefits. In summary, the study states that "* * * the (only) major difference between

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[24] Mordechai E. Lando, Alice V. Farley, and Mary A. Brown, "Recent Trends in the Social Security Disability Insurance Program," Social Security Bulletin, August, 1982, volume 45, No. 8, page 9.

[25] Social Security Amendments of 1967, Senate Report No. 744.

[26] "First Findings of the 1972 Survey of Disabled: General Characteristics," Social Security Bulletin, October, 1976, volume 39, No. 10, pages 6–10.

[27] "Social Security in America's Future," final report of the National Commission on Social Security, March, 1981, page 196.

[28] Social Security Bulletin, "Recent Trends in the Social Security Disability Insurance Program," August, 1982, volume 45, No. 8, page 10.

[29] Jacob J. Feiman, "Work Ability of the Aged Under Conditions of Improving Morality," State before the National Commission on Social Security Reform, June 21, 1982, page 2.

[30] Social Security Bulletin, "Recent Trends in the Social Security Disability Insurance Program," August, 1982, volume 45, No. 8, page 11.

[31] Phoebe H. Goff, "The Post-Denial Experience of Disability Insurance Applicants, 1957–1962," Social Security Administration, Office of Research and Statistics, Staff Paper No. 5, page 29.

the groups is that one receives Social Security benefits and the other does not." [32] Those subjects who did not receive benefits, like their counterparts who were granted benefits, remained unhealthy and never returned to work.

Issues underlying efforts to reduce caseloads

As stated in a 1976 article, growth in the disability insurance caseload was the major program issue of concern to SSA.[33] The remainder of this report presents questions related to the SSA's decision to reduce caseload growth by narrowing the criteria. The additional questions discussed in the paper are listed below:

A. Why, in fact, was the caseload growing prior to 1976?
B. How was this growth reversed?
C. What happens to applicants whose benefit applications are denied?
D. How do the SSI disabled differ from the SSDI disabled?
E. What is the status of the SSDI Trust Fund?
F. How have modified eligibility criteria affected state relief programs?
G. Do ALJ's award benefits to applicants who are able to work?

A. Why, in fact, was the caseload growing prior to 1976?

The number of disabled workers receiving SSDI benefits increased every year, from the program's enactment in 1958, through 1978; the number of recipients has currently dropped approximately to the 1976 level.[34, 35]

Relatedly, the SSI disability program grew beginning with its enactment in 1974, and appeared to continue this growth until January 1982. By taking into account the SSA practice of categorizing SSI recipients over age 65 as "disabled" rather than "elderly," it becomes clear that SSI disabled caseloads have dropped to their 1976 levels (i.e., the number of disabled SSI recipients under 65 years of age equalled 1.8 million in both 1976 and 1982).

For both programs, the decline in caseload was preceded by a decline in approvals which began in 1976 and has continued to the present.[36, 37] Comparatively, the current number of SSDI approvals is equal to approvals granted in 1968; approvals for SSI have reached the lowest level in the program's history.

Throughout this report, a distinction will be made between the term "caseload" (used in reference to eligible beneficiaries who receive benefits on an ongoing basis) and "approvals" (used in reference to newly approved disabled applicants). The section which follows discusses those demographic and programmatic factors which served to increase both caseload size and new approvals during the years prior to 1976. As outlined, few of these factors can be held directly responsible for the decline which began in 1976.

Population at risk of disability

In discussing the population at greatest risk of becoming disabled, the age group between 50 and 65 years is predominant. Members of this age group, while making up only about 15 percent of the total population which is under 65 years, represent 66 percent of SSDI beneficiaries and 48 percent of SSI disabled beneficiaries under 65.[38, 39] This relationship between age and the prevalence of disability among members of this age group demonstrates that the total number of disabled can be expected to contain a high representation of individuals aged 50 to 65 years. The total numbers within this age group continued to grow after 1976.[40]

National growth in income support programs

Generally, income support programs experienced a substantial growth from the late 1960's to the present. Nationally, during this period, recipients of Aid to

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[32] Eric R. Kingson, "The Health of Very Early Retirees," Social Security Bulletin, September, 1982, volume 45, No. 9, page 8.
[33] "First Findings of the 1972 Survey of Disabled: General Characteristics," Social Security Bulletin, October, 1976, volume 39, No. 10, page 6.
[34] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, August, 1982, volume 45, No. 8, table M–12, page 30.
[35] "Old-Age, Survivors, Disability, and Health Insurance," Monthly Benefit Statistics, No. 8, table 1, page 1.
[36] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, August, 1982, volume 45, No. 8, table M–20, page 35.
[37] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, August, 1982, volume 45, No. 8, table M–17, page 34.
[38] "Demographic Characteristics," Characteristics of Social Security Disability Insurance Beneficiaries, July, 1982, table 2, page 6.
[39] "Current Operating Statistics: Quarterly Tables, "Social Security Bulletin, June, 1982, volume 45, No. 6, table Q–26, page 80.
[40] "Population Projects," Statistical Abstract of the United States, 1980, table 34, page 30.

Families with Dependent Children (AFDC) and state General Assistance (GA) doubled in number;[41] unemployment insurance beneficiaries tripled in number;[42] and food stamp recipients increased nine times over.

Factors which explain these increases in the overall dependent population include the following socioeconomic and attitudinal changes: (1) the visibility of the "war on poverty" made people more aware of the benefits available; (2) subsequently, the stigma of receiving welfare declined; and (3) the national unemployment rate increased from 4.5 percent in 1965, to 8.5 percent in 1975, and finally to 10.4 percent in 1982.[43]

Increased benefit levels

Some argue that increased applications and caseloads were in large part, caused by an influx of employable applicants who were attached to the programs' increasingly attractive benefits.[44]

This argument fails to stand up in light of information that those who are denied beenfits do not return to work, as one would expect employable individuals to do. In fact, few applicants who are denied benefits ever earn substantial income again.

Improved health status

Furthermore, measures of overall health did not improve during this period of caseload growth. Unhealthy non-recipients, when measured in terms of mortality rates and the length of time during which disability limited their ability to work, appeared slightly less healthy than SSDI recipients.[45] This finding refutes the notion that overall improvements in the nation's health status produce more applicants who are healthy, long-lived and gainfully employable.

Increased unemployment

Finally, some conclude that increased disability rates are a function of increases in the unemployment rate and the replacement rate (i.e., the amount of benefits received relative to an individual's past, predisability earnings). The inference drawn from this statistical relationship is that more non-disabled individuals choose to apply for SSDI benefits as jobs become more scarce, and as benefits more nearly replace potential earnings. Although this conclusion is not refuted, it is suggested that any correlation between the disability rate and unemployment is primarily related to the fact that additional competition in the labor force (caused by unemployment) increases the barriers to employment which the disabled face even in periods of plentiful employment.[46] It should, furthermore, be noted that SSDI applications have recently shown a slight decrease, regardless of increasing unemployment rates.

In summary, with the exception of a one-time surge of applicants due to implementation of the SSI program, all factors expected to increase program growth between the mid-1960's and 1976 were also present subsequent to 1976. The next section of this report discusses why, in light of contrary influences, caseload growth was reversed after 1976.

B. How was caseload growth reversed after 1976?

In 1976, the General Accounting Office (GAO) reported that disability determinations made by the separate states were not consistent across state lines.[47] For example, of 221 claims submitted to ten states, unanimous agreement was reached in only 48 cases. In responding to this criticism, SSA selected options

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[41] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, June, 1982, volume 45, No. 6, table M–28, page 42.

[42] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, June, 1982, volume 45, No. 6, table M–3, page 23.

[43] "Labor Force, Employment and Earnings," Statistical Abstract of the United States, 1980, table 655, page 396.

[44] Robert J. Myers, "Why Do People Retire From Work Early?", Social Security Bulletin, September, 1982, volume 45, No. 9, pages 10–11.

[45] Eric R. Kingson, "Response to Critique of Very Early Retirement Study," September 28, 1982. Scheduled for publication in Aging and Work.

[46] Mordechai E. Lando, Malcolm B. Coate, and Ruth Kraus, "Disability Benefit Applications and the Economy," Social Security Bulletin, October, 1979, volume 42, No. 10, page 3.

[47] General Accounting Office, "The Social Security Administration Should Provide More Management and Leadership in Determining Who is Eligible for Disability Benefits," HRD 76–105. August 17, 1976.

which ultimately reduced approval rates, but which failed to produce consistent decisions. SSA's primary remedy for the problem was to reduce the latitude which states could exercise in allowing disability benefits on an "equal to the listing" basis.[48]

Subsequent to reduce latitude in this area, the percentage of approvals made on this "equal to the listing" basis declined from 44 percent in 1975 to 9 percent in 1981.[49] Thus, barring awards granted on other bases, restriction in state discretion accounted for a 35 percent reduction in allowances between 1975 and 1981.

This change was not the sole cause of reductions in allowances. Rather, it was the principle cause and its effects were exacerbated by two other changes: (1) promulgation of the vocational grid; and (2) revisions in the distinction between "severe" and "non-severe" impairments.

As the following chart indicates, between 1975 and 1980, the percentage of total applications approved declined from 49.7 percent to 33.9 percent. The percentage of cases approved by state agencies also declined from 45.8 percent to 22 percent. Relatedly, as states lost discretion, more and more approvals occurred as a result of hearings. In 1975, approvals at the hearings, appeals council and court levels accounted for only 7.8 percent of all allowances, whereas by 1980, such approvals accounted for 26 percent of all awards.

Although the revised procedures were very effective in reducing the number of allowances and subsequently, the number of recipients, they did not produce the desired increase in consistency. Frequent instances of differing decisions based on the same information still exist. One 1981 report of a study conducted in 1978–79 concluded that differing decisions would be made in one of every six cases.[50] The Bellmon Report describes a study wherein third decisions were sought for 3,600 cases that had originally been decided at the ALJ level. These cases had all been denied by states at the initial and reconsideration levels. When these same cases were evaluated under state agency rules a third time, 13 percent were found eligible.[51]

A predominant conviction espoused by SSA is that disability decision making should be standardized and should produce uniform outcomes. SSA still aspires to make disability determinations more "objective" (as opposed to "subjective"). "Objective," in this case, apparently means "not requiring personal judgment." To this end, SSA has devised system lists, grids and formulae to remove the latitude of decision systems based on expert opinion and judgment. In short, they have attempted to mechanize the disability determination procedure.

A mechanistic system, however, is not necessarily appropriate for measuring the imponderables inherent in individual disabilities. As an expert on disability stated in Congressional testimony, "The underlying problem in providing and administering any plan of disability insurance is the extreme subjectivity of the state of disability." [52] Purely objective measures of a subjective state may well be equivalent to measuring miles with a thermometer, intelligence with a yardstick, or beauty with a clock. Furthermore, when a well-developed science does not exist, objective measures must be supplemented by expert judgment.

The need for such judgment is supported by the fact that the present effort to mechanize determinations still produces alarmingly inconsistent decisions. As the Bellmon Report states, 13 percent of cases that were once denied at both the initial and reconsideration levels were approved under the same procedures when examined a third time.

Earlier studies found similar results. Given these findings, Michigan does not believe that the determination of disability, as currently practiced, can be characterized as a science. Therefore, procedures must be issued which allow the latitude necessary for expert judgments to be formulated based upon the multiplicity of factors present in each individual case.

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[48] Subcommittee on Social Security of the Committee on Ways and Means U.S. House of Representatives, Reagan Administration Disability Proposals, October 20, 1981, page 5.

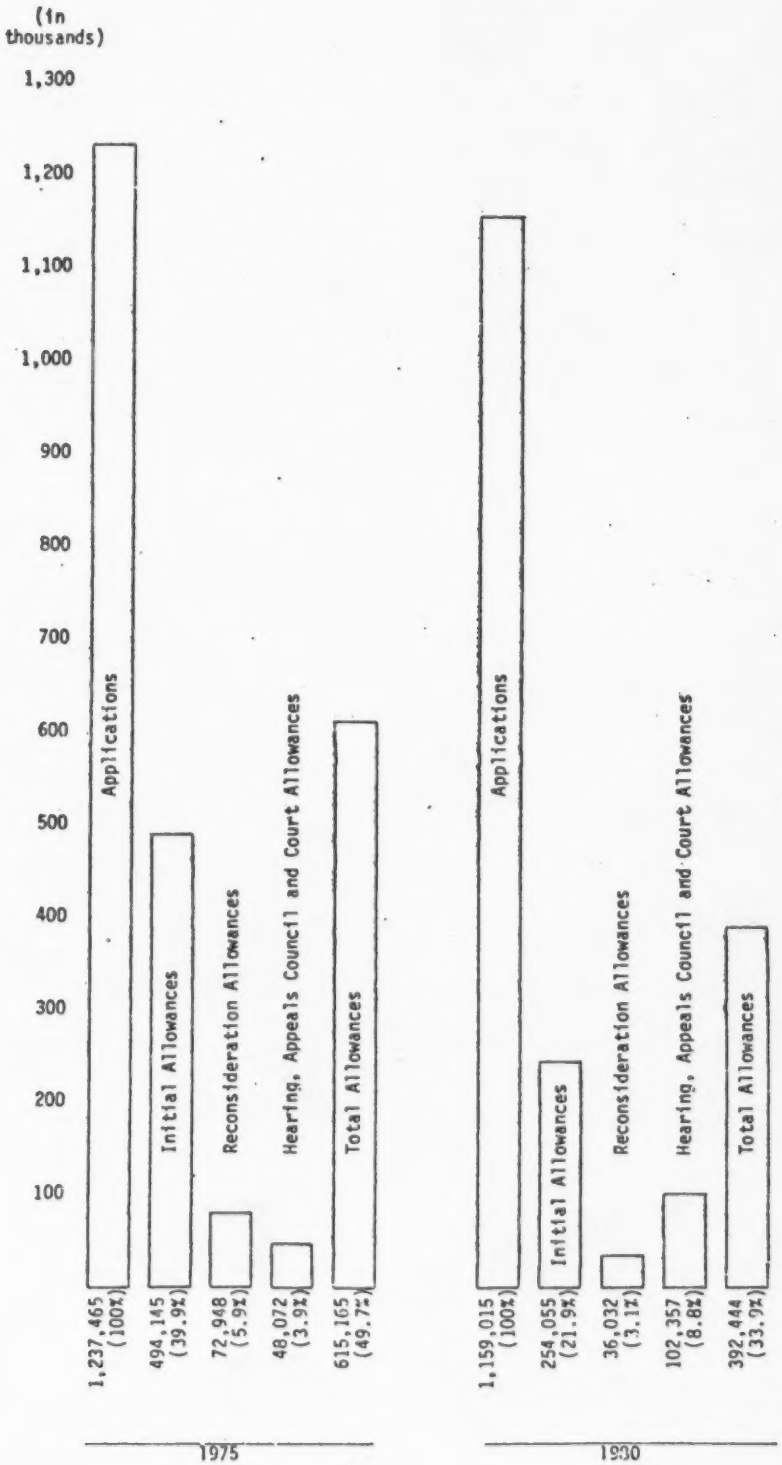
[49] Statement of Gregory J. Ahart, Human Resources Division before the Subcommittee on Governmental Affairs United States on Social Security Administration's Program for Reviewing the Continuing Eligibility of Disabled Persons, page 14.

[50] "Consistency of Initial Disability Decisions Among and Within States," U.S. Department of Health and Human Services, March, 1981, page 9. Staff paper No. 39.

[51] Implementation of section 304(g) of Public Law 96–265, "Social Security Disability Amendments of 1980," report to the Congress by the Secretary of Health and Human Services, January, 1982, page 13.

[52] Disability Amendments, Public Law 96–265, Social Security Disability Amendments of 1980, Senate Report No. 96–408.

APPLICATIONS AND ALLOWANCES
(Percentages of Initial Applications)



C. What happens to applicants who are denied benefits?

SSDI and SSI disability programs were established to provide financial support for those unable to "engage in any * * * kind of substantial gainful work." As previously noted, very few of the applicants who are denied benefits ever again earn a substantial income; some denied applicants become eligible for retirement benefits; some die without ever receiving benefits; and others are eventually found to be disabled.

Four separate SSA studies offer insights on the economic status of various classes of SSDI applicants who were denied benefits. Following are brief summaries of the reports.

Subjects in the first two reports included individuals whose initial applications were denied. Both studies outline the percentages of subjects who had found jobs, had gained benefits at a later date or had died within a few years after initial denial.

The first report is a five-year follow-up study of the circumstances facing individuals whose benefits were denied in 1957.[53] The findings show that by 1962:

66 percent of the subjects had never secured work (page 29);

10 percent of the subjects were earning $3,000 or more (page 29). (Less than 2 percent of those subjects who were formerly employed in service occupations were earning more than $3,000 in the first year after their denial.) (page 51);

15 percent of the subjects had reapplied for disability benefits and were found eligible; and

7 percent of the subjects had died without receiving either retirement or disability benefits (page 18).

The second study reports the 1966 status of individuals whose initial applications were denied in 1963, 1964, or 1965.[54] Table 7 of the report indicates that in 1966:

I percent of the male subjects were working full-time; and

Only 19 percent had worked subsequent to filing their SSDI application; and

The working subjects had a median wage of $2,670.

The last two studies focus, for the most part, on individuals who appealed their initial denials. Both studies outline the percentages of subjects who had found jobs or had died within five years after denial or appeal.

The third report is a five-year follow-up of applicants denied benefits in 1967.[55] The study compares two groups of subjects: (1) those who appealed an initial denial; and (2) those who accepted the initial denial and did not pursue an appeal. Findings show that, in 1972:

63 percent of the non-appellant subjects, and 72 percent of the appellant subjects, were not working; and

15 percent of the total group of subjects were earning more than $3,000.

The study also compares subjects based on the level of their pre-disability income. Subjects are categorized as: (1) high wage earners (who earned more than $5,400 prior to application); and (2) low wage earners (who earned less than $1,800 prior to application). Findings show that, by 1972:

35 percent of the high wage earners were earning $3,600 or more; and

7 percent of the low wage earners had some earnings.

The report states that "almost none of the low earners had substantial earnings in 1972, whatever the result of their disability claims." (page 24). It is important for the reader to note that nearly every SSI applicant would fall into the low earner category.

The third study also reports on the death statistics linked to the subjects studied. In 1972, the report found death statistics distributed among subjects according to the following patterns:

28 percent of the subjects who had received initial approvals had died;

20 percent of the subjects approved at the reconsideration level had died (page 39);

7 percent of the subjects died without ever receiving federal benefits; and

23 percent of the subjects were receiving retirement benefits (page 40).

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[53] The "Post-Denial Experience of Disability Insurance Applicants, 1957–1962," U.S. Department of of Health, Education and Welfare, Staff Paper No. 5.

[54] Philip Frohlich, "Denied Disability Insurance Applicants: A Comparison with Beneficiaries and Nonapplicants." Social Security Survey of the Disabled: 1966, September, 1970, report No. 11, tables 7 and 8.

[55] "Appeal by Denied Disability Claimants," Staff paper No. 28, August, 1976.

The fourth, and most recent, study followed-up on applicants whose benefits were initially denied between 1970 and 1975, but who subsequently requested an administrative hearing to appeal the denial.[56] The study reports that, in 1975, the following subjects were not working:

72.3 percent of the subjects denied at the initial application;

77.6 percent of the subjects denied both at initial application and at reconsideration; and

80.6 percent of the subjects who were denied by an ALJ.

The study also reports the following 1975 findings related to subjects with low earnings (less than $3,600 per year):

15.5 percent of low wage earning subjects had some current earnings;

5.7 percent were earning more than $3,600.

Finally, the study reports the proportion of subjects appealing through the ALJ level who died by 1976:

17.5 percent of those approved by an ALJ; and

12.9 percent of those denied by an ALJ.

The reports, as a group, indicate several important conclusions. First, researchers concur that, at least 67 percent of all denied applicants have no earnings whatever in subsequent years and the likelihood of subsequent earnings is even less for those applicants who were low earners prior to seeking benefits. Second, the reports reach accord in reporting that those approved at initial application died more frequently than those approved at appeal. In addition, the studies show that the death rate for those denied at all levels is substantially greater than that of the general population.[57]

D. How do the SSI disabled differ from the SSDI disabled?

The same definition of disability is used for the SSDI program and the disability portion of the SSI program. Nevertheless, applicants and recipients of SSI differ from applicants and recipients of SSDI in numerous demographic and socioeconomic dimensions. Several of these differences are critical when evaluating an individual's potential for employment. Others are critical when evaluating the consequences of denial. The differences in both populations are summarized below.

Work experience

SSI beneficiaries who have worked a sufficient number of quarters are eligible for SSDI benefits. However, the following statistics show that very few qualify. In December 1981, 2.3 million disabled individuals received SSI. Of these, only 275,000 (12 percent), received SSDI benefits based on their own work history.[58]

SSDI eligibility is dependent upon a recent connection with the labor force. In general, a worker must have had wages sufficient to establish insurance coverage in half of the quarters since age 21. Thus, except for the dependents of SSDI beneficiaries, all SSDI recipients have a history of work.

Former occupation

Nearly 25 percent of all SSI recipients had not worked in the 15 years prior to receiving benefits. An additional 14 percent had no employment listed on their application.

Of SSI disability applicants, the most prevalent occupation rated was "service" (20.5 percent); the second most prevalent was "structural work" (6.7 percent).[59]

Service occupations accounted for 13.7 percent of the SSDI recipients; structural occupations accounted for 12.4 percent of SSDI recipients.

Sex

Forty percent of the SSI disabled are male and sixty percent female.[60] Seventy percent of the SSDI disabled are male and thirty percent female.[61]

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[56] Ralph Treitel, "Disability Claimants Who Contest Denials and With Reverals Through Hearings," U.S. Department of Health, Education and Welfare, Staff paper No. 34, SSA Pub. No. 13–11864.

[57] Statistical Abstract of the United States 1972, "Vital Statistics, Health and Nutrition," table 77, page 57.

[58] "Current Operating Statistics: Quarterly Tables," Social Security Bulletin, June, 1982, volume 45, No. 6, table Q–2, page 60.

[59] Satya Kochhar, "Blind and Disabled Persons Awarded Federally Administered Payments, 1975," Social Security Bulletin, June, 1979, volume 42, No. 6, page 18.

[60] Program and Demographic Characteristics of Supplemental Security Income Beneficiaries December, 1980, U.S. Department of Health and Human Services, Social Security Administration, Office of Policy, Office of Research and Statistics, page 2.

[61] Characteristics of Social Security Disability Insurance Beneficiaries, July, 1982, Social Security Administration, Office of Policy, Office of Research and Statistics, page 3.

Disabling diagnosis

Diseases of the circulatory system account for about 20 percent of all SSI disability allowances.[62] Mental disorders account for about 30 percent. Nearly 50 percent of the mental disabilities are classified as mental retardation.[63]

Circulatory disorders account for 26.8 percent of the SSDI awards.[64] Mental disorders account for only 10 percent.

Age

An artifact of the SSI data system continues to count SSI recipients as "disabled" after their 65th birthday. Correcting for this miscount shows that 48 percent of the SSI disabled are ages 50 through 65 years.[65] The same age group accounts for 66.2 percent of SSDI recipients.[66]

Beyond the personal characteristics of the recipients, the SSI eligibility requirements select a very distinct subgroup, as described below.

Liquid assets

The liquid assets of SSI recipients are limited to $1,500. Those with larger savings are ineligible.

A study of the assets of SSDI beneficiaries in 1972 indicated that 54.9 percent held liquid assets with an average value of $7,956.[67]

Benefit amounts

In June 1982, the maximum federal SSI benefit for an individual recipient was $264.70. The average monthly payment was $215.75.[68]

There is no across-the-board maximum SSDI benefit. The average amount received in June by individual SSDI recipients was $442.85.[69]

Non-liquid assets

The non-liquid assets of SSI recipients are limited by program regulations. Stated briefly, any assets other than a home, limited personal property and a car of moderate value are counted toward a $1,500 resource limit.

There are no resource limits in the SSDI program.

Other unearned income

Social Security benefits averaging $214 per month are the most prevalent other income for SSDI disability recipients.[70] These payments are made to 36.1 percent of the caseload. However, as noted under work history, only 12 percent earned the benefits based on their own employment. Of the 12 percent, one-sixth had worked so little that they were eligible for only minimum Social Security payments.[71]

When an SSI beneficiary has unearned income above $20 per month, the SSI payment is reduced dollar-for-dollar.

The unearned incomes of SSDI beneficiaries do not generally reduce their SSDI benefits until the combined income exceeds 80 percent of the indexed average predisability earnings. SSDI payments provide, on average, only about 40 percent of the predisability earnings. Therefore, on average, SSDI recipients can receive unearned income equal to their SSDI payments without seeking a reduction in SSDI benefits.[72]

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[62] Satya Kochhar, "Blind and Disabled Persons Awarded Federally Administered SSI Payments, 1975," Social Security Bulletin, June, 1979, volume 42, No. 6, table 8, page 20.

[63] Satya Kochhar, "Blind and Disabled Persons Awarded Federally Administered SSI Payment, 1975," Social Security Bulletin, June, 1979, volume 42, No. 6, page 16.

[64] Mary Ellen Burdette and Shirley Baker, "Health Characteristics," Characteristics of Social Security Disability Insurance Beneficiaries, 1976, SSA Pub. No. 13–11947, table 11, page 33.

[65] "Current Operating Statistics: Quarterly Tables," Social Security Bulletin, June, 1982, volume 45, No. 6, table Q–26, page 80.

[66] Mary Ellen Burdette and Shirley Baker, "Demographic Statistics," Characteristics of Social Security Disability Insurance Beneficiaries, 1976, table 1, page 6.

[67] Donald T. Ferron, "Assets and Disability," Disability Survey 72—Disabled and Nondisabled Adults, A Monograph, Social Security Administration, Research Report No. 56, April, 1981, table 11, page 187.

[68] "Summary Program Data, July, 1982 OASDI," Monthly Benefit Statistics, Social Security Administration, No. 7, table 2, page 3.

[69] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, October 1982, volume 45, No. 10, table M–13, page 45.

[70] "Current Operating Statistics: Quarterly Tables," Social Security Bulletin, September, 1982, volume 45, No. 9, table Q–25, page 80.

[71] "Social Security Beneficiaries Receiving SSI Payments," Research and Statistics Note, April 24, 1979, table 3, page 7.

[72] Mordechai E. Lando, Malcolm B. Coate, and Ruth Kraus, "Disability Benefit Applications and the Economy," Social Security Bulletin, October, 1979, volume 42, No. 10, page 8.

Other Income of the Household

If the SSI beneficiary resides with others, SSA will try to determine if the others are providing any support. If so, the SSI payment is cut by one-third. SSA presumes that others do help; it is up to the beneficiary to prove otherwise. If the client is married, the income of the spouse will be deemed available after certain disregards. The end result is that if the spouse has more than a very minimal income, the SSI payment will be reduced.

Neither the living arrangements nor the income of others will reduce the benefits available to the SSDI recipient.

Profile of Recipients

If one were to select personal characteristics most likely to be possessed by a recipient of each program, the SSI profile would be a female with severe retardation in her early 50's who had never earned a wage. The SSDI profile would be a male in his late 50's who has worked the majority of his adult life and who suffers from heart disease.

As profiled, the SSI recipient could not keep more than $20 per month of any other unearned income she was able to obtain. She would be required to liquidate all but a home and few limited assets, and spend the proceeds down to $1,500 prior to becoming eligible for SSI. If she lived with others, her SSI grant would be reduced to account for the value of any help received from them.

As profiled, the SSDI recipient could have other income that would nearly equal the Social Security benefit, and could retain any of the assets accumulated while working. Neither living arrangements nor the income of other family members would affect the SSDI benefit level.

Profile of denied applicants

A resource- and income-eligible SSI applicant determined "able to work" would have liquid and other non-homestead assets of less than $1,500, and an average income of less than $100 per month. The applicant's spouse, if any, would have few assets other than a homestead and income of less than $1,000 per month.

The denied SSDI applicant could have unlimited liquid assets and resources. The spouse, if any, could also have unlimited assets and income. The applicant could also continue to be eligible for private disability insurance provided by the former employer.

E. What is the Status of the SSDI Trust Fund?

The SSDI program is funded by allocating a portion of Federal Insurance Contribution Act (FICA) payments made by workers and employers to the Disability Insurance (DI) trust fund. The DI trust fund is separate from the Retirement, Hospitalization, and Supplemental Medical Insurance funds.

From 1966 through June 1974, the DI trust fund experienced growth; it increased from $1.7 billion to $8.3 billion.[73] An 11-percent increase in June 1974 benefits, subsequent cost of living increases, and a flawed formula for computing initial benefits contributed to reducing the trust fund from July 1974 through January 1978,[74] when the fund contained only $3.2 billion.

The 1977 Social Security Amendments allocated additional funds to the SSDI program and corrected the benefit computation. Consequently, the SSDI fund began growing again. By September 1980, the fund had increased to $7.7 billion.[75] A $3 billion transfer of DI funds to the retirement trust fund occurred in October 1980. A portion of the FICA allocation for SSDI was temporarily reassigned to the Retirement Trust Fund. Additional interfund transfers from Disability to Retirement occurred in late 1982.

Had interfund transfers ceased, as mandated, in January 1983, and had the DI fund once again received its full portion of allocated FICA, the fund was expected to grow substantially.[76] It was the only program expected to be in the black in

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[73] "Current Operating Statistics," Social Security Bulletin, October, 1975, volume 38, No. 10, page 29.

[74] "Current Operating Statistics," Social Security Bulletin, November, 1978, volume 41, No. 11, page 32.

[75] "Current Operating Statistics: Monthly Tables," Social Security Bulletin, December, 1981, volume 44, No. 12, page 32.

[76] 1982 Annual Report, Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, communication from the Board of Trustees, Federal Old-Age and Survivors Insurance and Disability Insurance Trust Funds, 97th Congress 2d session, House Document No. 97–163, pages 109–110.

1991—at which time it would have had a balance exceeding 400 percent of yearly expenditures.

The Social Security Reform Amendments of 1983 substantially modified the earlier SSDI trust fund projections by cutting nearly in half the funds allocated for the out years. The 1980 Disability Amendments had allotted the DI fund 1.9 cents out of every taxable dollar between 1985 and 1989. The 1983 amendments reduced the allocation to 1 cent per dollar for the same period. Barring unprecedented and ever steeper decreases in the DI caseload, this reduction in funding assures that the Disability fund will be in the red before the end of the decade.

In summary, the SSDI trust fund had been increasing. Except for past interfund transfers and a temporary reallocation of its portion of the payroll tax, the fund would have the highest balance in the history of the program.

F. What is the impact of recent changes on State relief programs?

Although it is difficult to guage the impact that tighter disability criteria have had on state and locally administered programs, it is clear that many of those denied benefits under federally-administered programs have become recipients under the General Assistance (GA), Aid to Families with Dependent Children (AFDC) and Medically Needy programs. Others denied benefits enter or return to psychiatric hospitals, prisons and jails. Following are three findings suggesting that between 30% and 50% of those denied disability benefits will end up on state and/or local relief.

1. A recent study of 160 SSI cases terminated in Michigan due to the CDI process found that 48% subsequently became eligible for GA, AFDC or Medicaid. An additional 7% entered psychiatric facilities, 4% entered prisons or jails, 5% are receiving outpatient mental health services and 2 percent died.

2. A report from the State of New York indicates that, of those SSDI cases losing benefits through the CDI process, about 30% end up on state or local welfare rolls.

3. States voluntarily assisting the medically needy disabled (under Group II Medicaid) have experienced startling caseload increases. These increases encompass the Medically Needy disabled who, in the absence of federal disability benefits, receive state relief. The history of this phenomenon is discussed below.

In 1973, prior to the SSI program, states like Michigan, administered programs providing aid for two distinct groups of the disabled. These programs were: (1) Title XIV, Aid to the Disabled (AD), including Group I Medicaid coverage; and (2) the Title XIX Group II Medicaid program.

The AD program provided financial and medical assistance to the disabled with very limited income and resources. The Group II Medicaid program paid the medical costs for those disabled whose incomes were sufficient to meet their basic needs but were not adequate to cover their medical needs. States used identical disability criteria and procedures in both programs.

In 1974, the SSI program replaced the AD program and SSI disability determination procedures became those used in the Title II SSDI program. States continued to use their earlier procedures to make determinations for Group II Medicaid eligibility.

Although the legal definition of disability was the same in both 1974 programs, the procedures had become different. Under the separated procedures some indigent SSI applicants were found simultaneously: (1) able to work and ineligible for SSI; and (2) disabled and eligible for Medicaid Group II under state procedures. The effects of these procedural differences became increasingly evident as SSA procedures became more rigid.

In December 1973, when the state-administered AD program was in force, there were 9,906 disabled in the Michigan medically needy program. By December 1977, the number of recipients had more than doubled to 20,096. In December 1981, there were 22,622 disabled receiving Medicaid, but not SSI.

Of these 22,000 Medicaid recipients, more than 7,000 also qualify under the strict needs standards of the state GA program. It is important to point out that in December 1973, these 7,000+ individuals would have qualified for the state-administered AD program.

The preceding data clearly support the contention that at least 30 percent of those who are denied federal disability benefits due to the increasing rigidity of the definition of disability will eventually receive state-funded benefits. If this 30 percent rate occurs and if the federal caseload decreases by 40 percent (as the reduced approval rate and as the CDI cessation rate would indicate), states can expect caseload increase equal to 12 percent of the total unduplicated SSDI and SSI disabled caseloads, or 730,000 persons.

G. Do ALJ's award benefits to applicants who are able to work?

In the Bellmon Report, SSA observes that, "* * * if steps to significantly tighten administration at the DDS level result in a higher percentage of reconsideration denial," and "* * * if individual ALJ's continued to allow the same kinds of cases they previously had allowed—the overall ALJ allowance rate would increase. This is, in fact, what the data show." [77] The report goes on to outline a number of steps designed to bring ALJ decisions more in line with DDS decisions, i.e., to deny benefits more frequently. The steps are:

1. Publication of large portions of the POMS Disability procedure as Social Security Rulings. The effect of this change would require that ALJ's rigidly follow the same set of minutely specified procedures that SSA has imposed upon state DDS's.
2. Increase training programs for ALJ's, giving particular emphasis to adjucative differences between ALJ's and DDS's.
3. Require ALJ's to spell out, in more detail, the reasons individual denials were reversed. SSA expects this change to "eliminate the implicit incentive toward favorable decisions." In other words, to reduce the approval rate.
4. For selected offices, allow SSA representatives to present a case for denial as part of the hearings process.
5. Require the Appeals Council to conduct increasing numbers of own motion reviews concentrating on ALJ's and hearings offices with high reversal rates.

Except for the last action, none of these steps were requested or authorized by legislation. Congress simply asked that, "The Secretary of Health and Human Services * * * implement a program of reviewing on his own motion, decisions rendered by administrative law judges * * * and * * * report to the Congress by January 1, 1982, on his progress." The Secretary reported that the own motion review process had not been implemented until October 1, 1981 and that, "Because the ongoing review program was only recently implemented, significant data about the results are not yet available." [78]

The SSA decision to modify ALJ practices implicitly assumed that ALJ's have historically awarded benefits to significant numbers who were not eligible under the law, and that current DDS practices do not deny benefits to those who are truly eligible. Historically, the vast majority of evidence shows that DDS disability procedures tend to deny applicants who did not return to work even though "not disabled." Other evidence has shown that the health problems of these denied applicants are "severe" under the common meaning of the word.

If the ALJ's were, in a significant number of cases, allowing benefits to all but very weak or frivolous claims, one would expect a large portion of the applicants denied benefits by ALJ's to return to work. Those allowed benefits would include all except claimants who clearly had no disabling impairments. Available statistics show that precisely the opposite occurs.

The proportions of those denied at ALJ hearings level returning to work is substantially less than the proportion of those denied at the initial level. Of those denied at the initial level, 50.2 percent did not work at all in the next five years and 83.9 percent had average earnings of less than $300 per month. Of those denied at all levels through administrative hearings, 62.5 percent had no earnings at all over the next five years; and 90.6 percent had average earnings of less than $300 per month. [79] Apparently, those who are denied at hearings have very little chance of subsequently obtaining work.

In many legal and quasi-legal proceedings, the number and percentage of decisions reversed on appeal has been an accepted measure of the accuracy of the initial determinations. Using this measure to evaluate the determination of disability at various levels it is found that, until 1976, ALJ's were reversing DDS decisions between 40 percent and 50 percent of the time. During the late 1970's, the reversal rate grew to approximately 60 percent. Over the same period, the reversal rate of ALJ decisions at the Appeals Council level fell from 9 percent in 1970 to 6.8 percent in 1975, and to 4.6 percent in 1980. Looking solely at the outcomes of appeals, one would conclude that the accuracy of DDS decisions has

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[77] Implementation of section 304(g) of Public Law 96–265, "Social Security Disability Amendments of 1980," report to the Congress by the Secretary of Health and Human Services, January, 1982, page 25.

[78] Implementation of section 304(g) of Public Law 96–265, "Social Security Disability Amendments of 1980," report to the Congress by the Secretary of Health and Human Services, January, 1982, page 31.

[79] "Disability Claimants Who Contest Denials and Win Reversals Through Hearings," U.S. Department of Health, Education and Welfare, December, 1979, page 23.

been declining while ALJ accuracy has been increasing.[80] While this approach oversimplifies the situation, it does point out that ALJ decisions are much more in agreement with Appeals Council decisions than are decisions rendered under the procedures established for the state DDS's. In fact, after removing references to face-to-face contact from cases evaluated in a study referenced in the Bellmon Report, ALJ's approved 46 percent—nearly equal to the Appeals Council approval rate of 48 percent.[81] Only 13 percent of the same cases were approved under the procedures specified for state DDS use.

In essence, the Bellmon Report shows that the two higher levels of review—ALJ and Appeals Council—were in close agreement when working with equivalent information. Yet the report concludes that the procedures of the two higher level decisions should be changed to those of the "odd man out." This is equivalent to deciding that umpires should follow the rules the players made up between 1976 and 1980 as the game went along. Congress did not change the rules of the game.

CONCLUSIONS

Since 1976, SSA has significantly tightened the definition of disability by revising the directions provided to state Disability Determination Services. This conclusion is supported by testimony from SSA staff and state administrators. Nearly all the major demographic and programmatic variables have pointed toward an increasing caseload. Yet the caseload has declined. Only the most gullible would accept SSA's allegation that their changed disability rules are simply clarifications of existing policy.

The rising percentages of cessations since 1976 also reflect the increasingly stringent disability criteria. The controversy arising after the March 1981 implementation of periodic reviews is but a symptom of the more rigid criteria. Had the criteria remained static, significantly fewer benefits would have been ceased; the majority of questionable closures would have been avoided.

The definition of disability has always been very stringent. Although many applicants who are denied benefits have physical and mental capabilities that would allow them to work in some conceivable environments, these seldom occur in the real world. Only 10 percent are ever fully employed again—two-thirds never work at all. The outlook for those with low predisability wages is even more dismal.

The definition of disability used for SSDI is not appropriate for the SSI program. Only about 12 percent of SSI disability recipients have worked long enough to establish eligibility for regular Social Security disability benefits. All available statistics show that applicants with a low earning history are the least likely to ever work again. The SSI definition of disability should be revised to allow benefits more readily to those with very little or no work experience.

STATEMENT OF JAMES A. COX, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

Dear Mr. Chairman: This statement is submitted for the record of the hearings held on June 30 pertaining to the Social Security Disability Insurance Program (SSDI). In announcing these hearings you stated that the Subcommittee was continuing its work on the disability programs and that the focus on the hearings was centering on needed improvements in the disability adjudicative process because of the direction the continuing disability investigation (CDI) has taken over the last year.

This statement is submitted on behalf of the National Association of Rehabilitation Facilities (NARF). NARF is the national voluntary membership organization of community based rehabilitation facilities. Our member facilities serve over 400,000 disabled people each year. Many of these people are social security disability insurance (SSDI) and supplemental security income (SSI) beneficiaries.

While we share your concern pertaining to the CDI Program, we would ask that in considering the SSDI program your committee also consider the need for reha-

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[80] Social Security Bulletin, "Recent Trends in the Social Security Disability Insurance Program," August, 1982, volume 45, No. 8, page 13.

[81] Implementation of section 304(g) of Public Law 96-265, "Social Security Disability Amendments of 1980," report to the Congress by the Secretary of Health and Human Services, January, 1982, page 26.

bilitation services for SSDI beneficiaries and for beneficiaries who, after being reviewed under the CDI program, have been terminated.

Prior to the Omnibus Budget Reconciliation Act of 1981, the SSDI program contained a provision providing for vocational rehabilitation services. That program authorized funds to be paid to state agencies for services delivered to SSDI beneficiaries. The purpose of the program was to return beneficiaries to work thereby resulting in savings to the trust funds. In 1981, $124 million was available under the program for both SSI and SSDI beneficiaries. Approximately 150,000 people were served. Several studies have been done of the program, all of which showed it to be cost effective.

The Omnibus Budget Reconciliation Act of 1981 (OBRA) amended the program and in our opinion, rendered it almost useless. The new provision provides that states will be paid either in advance or by way of reimbursement for successful rehabilitation. A successful rehabilitation is defined as a person performing substantial gainful activity for nine continuous months.

There are several major problems with the statute as amended. First, the provision severely limits the availability of funds which will result in continued dependence of many beneficiaries on cash assistance. The funding for the program was changed from a percentage of revenues from the trust funds to an appropriation based on "such sums as are necessary." The Administration has not requested sufficient funding. Only $6 million was requested last year and the same amount was proposed for Fiscal Year 1984.

Second, states and facilities are paid only on the basis of successful rehabilitation. The assumption appears to have been that states are expected to use funds under Title I of the Rehabilitation Act of 1973 to provide these services. However, funds under the Rehabilitation Act have been declining for the past seven years. Furthermore, these two programs address different parts of the total disabled population. Title I of the Rehabilitation Act is formulated to serve all disabled individuals who are referred to state agencies with a mandate that state agencies serve the most severely disabled first. People served under the SSDI vocational rehabilitation program are those who have been determined to benefit from a vocational rehabilitation program, regain the ability to work and no longer require benefits. Usually, this population is not the more severely disabled client. Given the virtual elimination of the program and reduced funds under the Rehabilitation Act, we believe many states are turning clients away. We understand that while all states have indicated an interest in participating in the SSDI rehabilitation program, as of early this Spring, none had filed a request for payment for services.

During the 97th Congress, your Subcommittee and full Committee on Ways and Means considered and reported H.R. 6181. Section 12 of H.R. 6181 would have amended and expanded the SSDI rehabilitation program. It would have expanded the scope of payment to include evaluation services as defined by SSA, services contributing to medical recovery, and services delivered if the beneficiary, without good cause, fails to continue to accept services or fails to cooperate, in addition to paying for successful rehabilitations.

It would have also required payment for services delivered to be paid in advance; allowed the Commissioner of the Social Security Administration to contract directly with public and private organizations to provide rehabilitation services; and provided evaluation and job placement services to people who are no longer deemed disabled as a result of the continuing disability investigation. We support all of these changes.

While the provision would have been very helpful in expanding the circumstances for which services would be paid, it left open the question of covering the cost of delivering services for unsuccessful rehabilitations. If the program is going to reimburse facilities or states only for the services outlined above, both facilities and states will be at risk for good faith efforts to rehabilitate beneficiaries that do not result in a successful rehabilitation. State agencies may use the basic state grant funds, but such funds would then be depleted for other clients. Facilities have to pay for funds for services out of their own capital, which means they would be decreasing their service capacity.

We believe it would be imprudent for the facility to accept referrals if they must pay the cost whether or not the rehabilitation was successful, unless there is an incentive for a financial payment commensurate with the risk. Even the best evaluation techniques do not guarantee one hundred percent success. If the cost paid is for successful rehabilitations, and none for unsuccessful ones, the

facility can, at best, only come out even. Actually, they will always be losing funds. If facilities accept such referrals and the risk of nonsuccessful rehabilitations, there should be an incentive and reward for doing so.

We recommend that any disability bill considered by the Subcommittee include a provision to expand the vocational rehabilitation program, both for SSDI and SSI beneficiaries. To this end, we recommend that the language of Section 12 of H.R. 6181 as reported by the Ways and Means Committee last year be adopted with one change. That change would provide that in those instances where facilities contract directly with the Commissioner, that an incentive payment in the form of a premium over cost be included in facility payments. We recommend a premium over cost of services be included, recognizing that if such services are not successful, reimbursement will be zero. Such an incentive will prompt more facilities to participate in the program, and to provide services and rehabilitate greater numbers of people. In the long run, it will result in greater savings to the trust fund.

STATEMENT OF MICHAEL F. JACOBBERGER, REGIONAL VICE PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION CHAPTER NO. 224, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION

On behalf of the 265 Attorney Advisors of the Social Security Administration's Office of Hearings and Appeals (OHA), we are pleased to offer our views on the role of OHA Staff Attorneys in the administration of the disability review process.

At the outset, we would like to indicate our support for the provision in H.R. 2987, introduced by Rep. James Shannon, which provides for career advancement for OHA Attorneys. We believe that, by establishing a career ladder which will enable Staff Attorneys to apply for the position of Administrative Law Judge, Section 307 will provide the government with a highly skilled and dedicated group of Attorneys, who have specific experience in disability law, to help reduce the tremendous backlog of disability appeals.

The Attorney Advisor support program was initiated in the Office of Hearings and Appeals in August of 1975, in the face of a backlog of slightly more than 100,000 cases. The initial group of some 200 Attorneys, with temporary appointments, helped bring about a substantial reduction of that backlog, and these Attorneys were made permanent employees in January of 1977.

The Attorney Advisors provided legal research of complex issues and assisted in the decision writing process. As a result, the Administrative Law Judges were able to significantly increase the number of cases adjudicated.

Since the inception of the support program, the Attorney Advisors have acted in many cases as the alter ego of the Administrative Law Judges. They have proved that their ever-increasing expertise has been a valuable asset to the Administrative Law Judges in the hearing process, by participating in the adjudication of literally thousands of hearing decisions. Many of these cases have involved interpretations of complex issues of law and regulation, and a resolution of involved factual, procedural, jurisdictional, and evidentiary questions. In addition, the Attorney Advisors have assisted in the interpretation and evaluation of highly technical medical reports and diagnoses, and analyzed statutory provisions on such issues as medical disability, residual functional capacity, insured status, the nature of income, legitimacy of children, interstate succession, and conflicts of law involving statutes governing corporations and taxes.

They have drafted decisions of varying complexity, including Part A Medicare appeals, and have frequently had direct communication with claimants or their Attorneys, including pre-hearing conferences. Because of their extensive involvement at the hearing level the Attorney Advisors have become uniquely knowledgeable about the hearing process and the requisites for according a fair and judicious hearing to Social Security claimants.

The Office of Personnel Management (OPM) has recognized that the existing job description of the Attorney Advisors constitutes the requisite administrative law skills under OPM announcement No. 318, which governs the employment qualifications of Administrative Law Judges.

Under OPM Announcement 318, to be eligible for placement on the Administrative Law Judge register, a person must have seven years of "qualifying experience" in the field of administrative law, at least one of these at "a level of

difficulty, complexity, responsibility and importance characteristic of at least the next lower grade in the Federal Service" (i.e., GS–14).

Though several hundred OHA Staff Attorneys have the required seven years of experience with specific expertise in the area of Social Security disability law, their career ladder ends at the GS–12 level. Under current OPM regulations, they will never be able to advance to the ALJ position, despite the critical need for additional ALJ's to handle the tremendous backlog of Social Security disability cases. Quite naturally, this situation has led to a serious morale problem, and resulted in the decision of many of these Attorneys to leave government service rather than face a future which includes no opportunity to use their highly specialized job skills for advancement.

We believe there is an urgent need for appropriate legislative action. The Subcommittee on Social Security of the Committee on Ways and Means has previously expressed its concern about the status of OHA Attorney Advisors, and language contained in H.R. 5700 (97th Congress, 2nd Session, later entitled H.R. 6181) was intended to offer this corps of uniquely skilled professionals an appropriate career ladder. However, the provision was ultimately deleted from H.R. 5700 based upon a concern expressed by the Office of Personnel Management that it would have the effect of modifying OPM's qualification standards for appointments to the position of Administrative Law Judge. Since that time, we have tried to develop a program to allow for greater career advancement and, at the same time, assure that the qualification standards for appointments to the Administrative Law Judge position would not be affected. We believe that section 307 of H.R. 2987 meets these objectives.

The provision requires the Secretary of the Department of Health and Human Services to establish a "sufficient" number of GS–13 and GS–14 Attorney Advisor positions to give individuals an opportunity to achieve the experience necessary to qualify for appointment as Administrative Law Judge. Based upon my own experience gained in more than five years with the Office of Hearings and Appeals, it appears that the Secretary will have essentially four options in responding to this legislation.

First, the Secretary could propose a mere reclassification of the Attorney Advisor position from that of the current GS–905 series at grades 9, 11 and 12 to that of GS–905 series at grades 9, 11, 12, 13 and 14, without any consideration of additional job duties or responsibilities; second, the Secretary could argue that the creation of supervisory or "lead" Attorney positions has already been undertaken, providing a career ladder to the GS–13 level; third, the Secretary could propose additional job duties and responsibilities which would justify the reclassification of the current Attorney Advisor series; or fourth, the Secretary could propose the creation of entirely new positions which would draw upon the experience obtained by the current Attorney Advisors in the performance of their duties and further the mission of the Office of Hearings and Appeals, and/or the Department of Health and Human Services.

The first of these options has merit in that Appeals Council Analysts, who perform work similar to that done by Attorney Advisors, may now reach the grade of GS–14 and, assuming they have adequate "qualifying experience" in the field of trial or "administrative law," may also satisfy the requirements for appointment to the position of Administrative Law Judge under present OPM standards. An Attorney Advisor for the Office of Hearings and Appeals, whose job duties are equal, if not greater, in scope and complexity to those of an Appeals Council Analist, cannot qualify because of the existing GS–12 journeyman grade ceiling.

Upgrading senior Attorney Advisors has also received support from the Association of Administrative Law Judges, which overwhelmingly passed a resolution to that effect in 1981. However, regardless of the relative merits of this option, it is clear that any attempt to simply upgrade the current Attorney Advisor position without any consideration of additional job duties or responsibilties would force OHA on to a collision course with the Office of Personnel Management.

The option of creating supervisory positions would not adequately address the current problem. Under OPM Announcement 318, an individual applying for the position of Administrative Law Judge must have seven years of general qualifying legal experience, two of which must have been in the areas of trial or administrative law and one of which must "have been of a level of difficulty, complexity, responsibility and importance" characteristic of the GS–14 grade in the Federal service. A strict interpretation of this last requirement could mean that the legal (as opposed to the mere supervisory or managerial) experience of the applicant must be of the requisite (GS–14) level to be considered for appointment to the GS–15 Administrative Law Judge register. Merely taking existing GS–12 Attorney

Advisor duties and adding "supervisory" or "managerial" functions in order to justify a GS–14 salary might not allow the Attorney Advisor to "achieve the experience necessary to qualify for the Administrative Law Judge position."

The third option, which would add sufficient job duties and responsibilities to the existing Attorney Advisor job description and, thereby, justify the upgrading of the position, would be difficult to implement in light of the rather extensive number of highly responsible duties already performed by the GS–12 Attorney Advisors. Any duties and responsibilities which could be added to the position of an Attorney Advisor either do not exist in the agency at the present time, or are currently performed by Administrative Law Judges.

The fourth option, therefore, appears to be the most practical. The creation of new Attorney positions within the Office of Hearings and Appeals, the Social Security Administration, and/or the Department of Health and Human Services could enable the Attorney Advisors to utilize their highly specialized job skills and achieve the experience necessary to qualify for the position of Administrative Law Judge under Announcement 318. Positions currently under discussion include the nationwide implementation of the now-experimental Government Representatives Program and the creation of a corps of competent Hearing Examiners to adjudicate Social Security disability claims at the reconsideration level. Both programs could generate a sufficient number of opportunities for advancement, regardless of geographic location, as well as an opportunity to achieve the experience necessary for the position of Administrative Law Judge under OPM Announcement 318.

In conclusion, with appropriate action by Congress and the Secretary of the Department of Health and Human Services, Attorney Advisors for the Office of Hearings and Appeals of the Social Security Administration will have the opportunity to satisfy both their need for advancement and their desire to offer continuing service to the government. The Attorney Advisors are a logical source of future OHA Administrative Law Judges because they are already well trained in legal issues involving the Social Security Act and regulations, and have extensive experience with the medical and vocational problems associated with the disability determination process.

The Attorney Advisors understand that this is, essentially, a management problem and should be resolved by the agency. However, the Subcommittee is well aware that the Attorney Advisor program is now in its eighth year and little progress, if any, has been made to establish career opportunities.

Your interest is greatly appreciated. Thank you.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
June 7, 1983.

Hon. J. J. PICKLE,
Chairman, Subcommittee on Social Security,
Washington, D.C.

DEAR JAKE: Thank you for your note regarding the Subcommittee's review of the social security disability insurance program. I have been very pleased by the Subcommittee's continued efforts to seek equity in the manner in which periodic reviews are conducted, and I was equally as interested to learn of the Administration's announcement to curtail review of those suffering from mental disability.

Enclosed is a copy of the correspondence which I received from Mrs. Karol Singleton last December following the unfortunate circumstances surrounding her husband's death. Thank you for your interest in making this a part of the Subcommittee's records.

Cordially,

JERRY M. PATTERSON, *U.S. Congressman.*

Enclosures.

SANTA ANA, CALIF., *October 15, 1982.*

DEAR CONGRESSMAN PATTERSON: This is in reply to your letter of September 17. I received my Social Security check the end of September. Thank you so very much for your intervention in the matter.

I would appreciate it very much if you would do everything in your power to try and save some other person's life by working for a change in procedure they

are using now in cutting the disabled from Social Security without giving them a hearing first, and maybe my husband's death won't be in vain.

I gave my story at a Social Security rally in Los Angeles last month hoping my story would help someone else, or to change someone's voting views.

I am so thankful you were reelected to another term. My son and I donated some hours on the telephone for you at your headquarters in Garden Grove. We need you in Washington to try and fight Reaganomics and other heartless acts in this Administration.

Thank you for your help. I am sending a copy of this to Linda Godinez.

Sincerely,

KAROL SINGLETON.

My name is Karol Singleton. My husband and I were married 25 years ago and have three children, who are still at home. My husband had three heart attacks and open heart surgery approximately 10 years ago. Due to the severe damage his heart attacks left him, he could not return to work. He was hospitalized periodically for congestive heart failure. He was receiving Social Security Disability. This present administration issued an edict to cut Social Security Disability by 10 percent and changed the wording and guidelines to sedentary. Not taking anything else into account.

In November 1981 we were surprised after not receiving our monthly check. My husband went down to the Social Security Office and made out a lost check claim and received word at the end of the month he was no longer eligible to receive disability, and that we were overpaid since February 1981. My husband went to his doctor and got a letter and then went to Social Security to file an appeal. Sixty days later he was notified his appeal was denied. Again he was forced to go to Social Security to file another appeal. However this time we was required to wait 5 hours for assistance. He went to the State Rehabilitation and volunteered for rehabilitation and was told his disability was too severe for rehabilitation. During this time the loss of income we suffered caused our family to become delinquent in our bills and creditors began to phone daily to harass my husband. As things began to look worse we were forced to go through the humiliation of bankruptcy. At various times we were in danger of having our utilities turned off and our home foreclosed on. My husband began to have severe stress from our lack of income and harassment. He was hospitalized again in May 1982 with congestive heart failure and he passed away 1 day after our 25th Wedding Anniversary quite suddenly. I will aways believe that Reaganonomies was the cause of my husband's death.

I continued the appeal and in July, 1982 attended the hearing with the Administrative Law Judge. We were informed that based on his health records on file (the ones available to the S.S.A. all the time) he should not have been cut off his disability. But in the meantime I have no husband, his mother has no son, his children have no father. What is the price tag this Administration puts on human life? I don't believe his life was worth the check he got each month. I sit and think of all the people who cannot get out to file an appeal and those who do not know how to file an appeal and how many will die before their appeal is heard.

I realize that we must rid the program of the cheats, but the only way to do it is to have a medical hearing on a person before their benefits are cut, not having them do without an income for 9 months and then find that they are truly disabled. I hope my story can save at least one life and maybe my husband did not die in vain.

CONGRESS OF THE UNITED STATES,
June 23, 1983.

The Honorable J. J. PICKLE,
Chairman, Subcommittee on Social Security,
Ways and Means Committee.

DEAR MR. CHAIRMAN: It is my understanding that you will shortly be marking up legislation addressing the serious problems in the Continuing Disability Investigation process. I am deeply concerned about these problems and their effects on individuals who are undergoing review or pursuing appeals of terminations, and personally aware of many tragic cases in my own district, the Second District of Iowa.

My district is located within Region VII of the Social Security Administration. In October of 1982, the percentage of reversals of termination decisions at the Administrative Law Judge level of appeal was 70.1 percent—the highest percent-

age of reversal in the nation. Behind that percentage and continuing high percentages of reversal at the ALJ level are individuals who have endured much suffering, anxiety, fear, and humiliation. Needless to say, in light of these reversal rates, my District staff and I have extensive experience with the current processes for initial benefit application and for pursuing appeals of denials and terminations. I made that experience the basis for a number of recommendations I offered during the recently-held Select Committee on Aging hearing on the Disability Insurance program and the need for reform. I have enclosed a copy of my statement during those hearings, and I respectfully request that my recommendations be given consideration as you and your colleagues seek to address the problems in the current application and Continuing Disability Investigation processes.

Thank you for your attention to this letter and for your consideration of the enclosed statement.

Best wishes.

Sincerely,

TOM TAUKE, *Member of Congress.*

STATEMENT OF THE HON. THOMAS J. TAUKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. Chairman, fellow Committee members, witnesses, and guests, we are here today out of a shared awareness of the serious problems in our current system for determining initial and continuing eligibility for Social Security Disability benefits. We confront statistics revealing a significant increase in the percentage of initial Disability Insurance (DI) benefit applications which are denied and dramatic increases in the numbers of individuals being removed from the DI rolls. That something is clearly wrong with these determinations is indicated by the number of denials and discontinuations of benefit cases which are reversed at the Administrative Law Judge level of appeal. In the month of October, 1982, for example, the Office of Hearings and Appeals for Region VII, which serves my Congressional District, reported a reversal rate at the Administrative Law Judge (ALJ) level of 70.1 percent, the highest in the nation. The national average, as reported by the Region VII Office, was 61.3 percent, and the lowest average reversal rate was 53.2 percent.

Behind these statistics are the wrenching individual cases of which we are aware through media reports, through letters from and conversations with affected constituents and their families, and through reports from our own caseworkers who work on a daily basis with those applying for DI benefits and with those being reviewed for continuing eligibility. One of my caseworkers shared the following case with me: We recently assisted a woman in her mid-fifties with her appeal of the termination of her benefits. This individual had undergone multiple surgeries which required that she use special appliances and dressings for abdominal openings that would never close. She had herniating abdominal organs, but her system and abdominal wall would permit no further surgery. She was rapidly losing coordination and having occasional blackouts, which were possibly small strokes. She lacked the coordination of thought and tongue to permit normal speech. Yet this individual had to go to the ALJ level to regain her eligibility for Disability benefits. The story of this woman's case brings the numbers, the statistics, down to reality. It gives some indication of the human suffering, the anxiety, the fear, and the humiliation experienced by many under our current processes for determining initial and continuing eligibility for Disability benefits.

Perhaps less individually dramatic but equally important is the impact of reports of the way in which the current review process is being handled on those who are on the rolls and not yet facing review. How many individuals are fearful of engaging in any activity, however limited—and however beneficial and therapeutic to the individual—for fear of being "reported" and thrown off the rolls? I think of the woman whose chief pleasure in life is her garden. She would like to continue working in her garden when her health and energy permit a few hours of activity in the cool of the mornings and evenings. She writes in to inquire about whether or not she should. Will this activity be "used against me" if I am reviewed? Or I think of another constituent who was initially granted Disability benefits because of a severe mental illness. He was reviewed and terminated from the rolls, then, after months of severe anxiety, reinstated at the ALJ level. He has periods of mental health in which he would very much like to volunteer his services in the community. He is bright, articulate, capable during these periods. Yet he fears volunteer work. He is haunted by the spectre of another review, and he worries constantly about the state of his "file." Are his records complete?

It is the plight of these individuals, of which we have become directly aware through our efforts to assist constituents and indirectly aware through media reports, which gives immediate and painful reality to statistics. It is this plight which has spurred action in the last Congress and in this Congress to right the wrongs in the Disability benefit application and review process, to seek to humanize this system.

In preparing for today's hearing, I asked my District Caseworkers, who work daily with benefit applicants and with those being reviewed, to answer the following question: "If you were in a position to change the system to address the problems you have seen, what changes would you make?" They have offered some excellent suggestions which I offer today for your consideration:

(1) Education of the potential disability applicant and of those selected for review and their physicians and others concerned with the processes so that the most complete and up-to-date information accompanies the initial application or response to the review notification. This recommendation could be accomplished through (a) more detailed printed material available from the Social Security Administration, including examples of conditions which do and do not qualify for disability; (b) more in-person, individualized casework on the part of the SSA local office personnel with potential applicants; and (c) more individualized attention and information provided to those who are responding to a notice of review or initial termination. A face-to-face interview at this level is highly recommended. At the very least, the requirement of establishing face-to-face interviews at the "reconsideration level" contained in legislation passed last year and being implemented by the SSA should be maintained and implemented as quickly as possible.

At first glance, these recommendations appear to add to the already overburdened SSA local offices, an overburdening which has been cited as one of the reasons for the large numbers of individuals allowed on the rolls in the 1970s who may not have been totally qualified and provoking current stricter review procedures, and for some of the problems in the current procedures.

However, I believe that the additional burdens at the local SSA offices—and the additional personnel which would be necessary to provide for more individualized, face-to-face reviews and assistance—would in the long-run be the most effective means of correcting the problems in the current system in a humane way. A more individualized, helpful review of initial applications could serve to reduce significantly the number of unqualified individuals who find their way onto the rolls and the number of appeals of initial rejections. Further, these reviews would help to identify those who are obviously disabled, yet whose conditions, on paper, call their continuing eligibility into question. It would make unnecessary for many individuals and for the SSA the costly, lengthy appeals process which is today resulting in an unprecedented number of reversals at the ALJ level.

(2) Broadening the factors taken into account in determining the Severity of Impairment and in determining eligibility for continuing benefits. Under the current system, at the Severity of Impairment step in the determination of initial eligibility, the focus is often on a specific disabling medical problem, and in the determination of continuing eligibility, again,, the focus may be on this narrow medical impairment. No consideration is given to multiple medical problems which, taken together, might constitute clear evidence of disability.

Similarly, more consideration should be given to vocational, educational, and prior work experience factors earlier on in the application for benefits review and in the review process for determining continuing disability. This is especially true for widows, widowers, and divorced spouses, who are now, by law, evaluated only on their extent of medical impairment.

In denying benefits to individuals who fail to meet the severity of impairment tests focused on a narrow medical condition, but who, through a combination of factors such as multiple non-severe impairments and lack of education, work experience, and job-availability on a regional basis are clearly unemployable, we accomplish nothing. We simply shift the benefit burden from one program—the Social Security Disability Insurance program—to the states, and to the extent that states receive federal matching funds for welfare assistance programs, to the federal Treasury.

It seems to me that we are caught up in a thicket of prescriptive, narrowly-focused criteria which blind us to the whole person, to the individual before us. This is the chief problem with our current system and the chief source of the anxiety and fear it provokes in individuals and of the hardships which are inflicted upon those applying for benefits and those being reviewed.

(3) Eliminate the five-month waiting period for those who are terminally ill. This is one clear example of the failure of the current system to consider the in-

dividual before it. There may be a justification for some waiting period for those whose disability eligibility is marginal and who might very reasonably be expected to recover sooner that the year standard currently in place. But a waiting period for the terminally ill makes no sense whatsoever.

(4) Examine and revise the regulations governing lawyer representation of individuals pursuing appeals. To what extent does the guarantee of 25 percent of the back benefits of the individual encourage last minute filings of appeal notices? Under the current system, there is no incentive for attorneys to pursue a claim any faster than is required under SSA regulations. Last-minute filings, requests for extensions, and other such practices lengthen the period before a final appeal is made, increase the benefit owed, and consequently can increase the attorney's fee. That is wrong—and it should not be allowed to continue as a modus operandi of some attorneys in disability cases.

(5) Continue the payment of benefits through the ALJ level. This change enacted in the last Congress has been greatly helpful to individuals undergoing the often lengthy appeals process and should be continued beyond the September 30, 1983, expiration date of the current authorizing legislation.

In conclusion, let me ask that we examine the meaning of the word "reform." Too often, we lose sight of that meaning. We equate it with "cut," with eliminating "waste, fraud, and abuse." The word means "reshape." It seems to me that the need before Congress is that of reshaping our Disability Insurance program to ensure that those who truly need benefits will receive them. This can best be accomplished by reshaping the system to make it possible to consider the "whole person" before us . . . to give him or her the information required to determine eligibility or continuing eligibility, to provide for face-to-face reviews as early as possible in the benefit application or appeal of termination processes, to focus not upon the number of arms or legs he or she has and then check the list to determine which ones and how many must be missing for eligibility, but to see the whole person and treat that individual not as guilty of attempts to defraud until he or she proves his or her innocence, but as an individual with dignity.

Thank you for your consideration of these observations.

STATE OF WISCONSIN,
BUREAU OF SOCIAL SECURITY DISABILITY INSURANCE,
June 22, 1983.

Re Social Security Disability Amendments of 1983.

Senator WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: I am writing to you based on my knowledge and experience as the Director of the State Agency in Wisconsin which makes the decisions on Social Security Disability and Supplemental Security Income claims. This letter does not necessarily represent the position of any other officials in the State of Wisconsin, nor that of other individuals in my Agency.

I am writing to you because of my concern that proposed legislation to remedy problems which have legitimately been identified with the Social Security Disability Amendments of 1980, is going too far in the other direction. This is especially true of proposals made by Senators Cohen and Levin in Senate Bill 476 and by Senator Heinz. I believe that hearings on these bills either have been held or are about to be scheduled. In looking at the proposals in these pieces of legislation, it is especially important to view them in the context of the recenty announced reforms which are already being implemented by the Social Security Administration.

The areas of legislation which I am most concerned about are as follows:

(1) Medical Improvement as a Basis for Terminating Disability

This proposal has the ring of fairness to it but it does not begin to consider the administrative problems which will result from trying to actually apply it. There are individuals who have been on the disability roles for ten years or more and the standards during that time which are used to determine disability have changed considerably. It may be very difficult to determine specifically what standards were in effect at the time of any individual's determination of disability and there is almost no one left who is familiar with old standards. It will be very difficult to interpret those old standards and apply them to specific claims.

Alternative

The National Association of Disability Examiners (NADE) has proposed alternatives which would accomplish the goals of the medical improvement proposals

without the administrative confusion which will result. The essence of the NADE proposals is that individuals who are 55 or older and who have been on the disability roles five years or more, would be continued unless medical improvement could be demonstrated. This group of individuals will be more likely to have been put on the roles in the recent past and it will be easier to determine the standards in effect and to apply them to the question of medical improvement. The second part of the proposal is that individuals who are 50 or more and have been on the roles at least ten years, would be continued unless they can do their past work. This would obviate the necessity of trying to determine medical improvement based on standards which would be difficult to identify and apply.

(2) Face-to-Face Hearings at the Reconsideration Level

There are two major problems with this proposal. The first is that it is the single most costly step which could be taken administratively in the Program short of simply paying benefits to everyone who applies. The logistics of having enough staff located in enough places so that face-to-face hearings would be a reality, are immensely costly. SSA has done numerous studies of the cost beginning as far back as 1967 and each time this suggestion was rejected precisely because of the major cost increases.

The second problem is that there already exists a relatively costly face-to-face hearing at the Administrative Law Judge level. Since no one is proposing eliminating that step, what we're really doing is adding a second costly administrative step which is in large part duplicative of one which already exists.

(3) Need to Obtain All Evidence of Record

This sounds reasonable, but it really does not belong as part of a legislative mandate. Obtaining specific kinds of evidence needs to be an administrative decision based on what evidence is available, and how quickly it can be obtained. Requiring that all evidence of record for a year be obtained before any consultative examinations are authorized, will simply slow the determination process while adjudicators sit with cases waiting for evidence which may never arrive or may not be sufficient when it does arrive. You should know that most independent examinations are purchased not to avoid considering or obtaining evidence of record, but because treating physician evidence is not forthcoming, or it is inadequate.

(4) Requiring States to Agree to Handle the Disability Program

Many states, including Wisconsin, are unhappy with the course that the Disability Program has taken. The additional cessations of disability benefits under the 1980 amendments have added to increased state and local welfare costs. The task of administering the Disability Program is a time consuming and difficult one for the states, and most states are fortunate if they recover their expenses in doing so. As an alternative, I propose that the same pattern be followed as was done when administration of the Program changed from contract to regulation. In that instance, states were only required to notify SSA if they decided not to administer the Program.

(5) Requiring the Secretary to Appeal All Decisions

The matter of when to appeal and when not to is a legal matter, based upon legal judgments. All attorneys utilize their prerogative as to whether or not an appeal is wise in an individual case. These are not matters which should be regulated legislatively. In a program as complex as this, there has to be administrative flexibility. The confusion which would result in the Program if every Federal Court decision (many conflicting) had to be applied nationally, and changes were made in operating procedures based upon every Circuit Court review, would be devastating to uniformity of decision making.

I urge you to consider the above points when it comes to deciding what legislative changes you will and will not support. I would suggest to you that the goal of any legislative changes is not only to make the Disability Program more responsive to the needs of the people who apply, but also responsive to the wishes of that much larger segment of the public which very directly pays for whatever changes are made. I would also request that you pass along copies of this communication to those Senators directly involved in committee work on bills making changes in the Disability Program, especially Senators Heinz, Cohen and Levin. Thank you for your consideration.

Sincerely,

ROBERT C. COHEN, *Bureau Director.*

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